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NextWave Wireless Inc.  
Form 10-K/A  
May 13, 2009  
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

AMENDMENT No. 1

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 27, 2008

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 000-51958

NextWave Wireless Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
Incorporation or organization)

20-5361630

(I.R.S. Employer  
Identification No.)

10350 Science Center Drive, Suite 210, San Diego, California 92121

(Address of principal executive offices and ZIP code)

Registrant's telephone number, including area code: (858) 480-3100

Securities registered pursuant to Section 12(b) of the Act:

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Title of each class	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	NASDAQ

**Securities registered pursuant to Section 12(g) of the Act:**

(none)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes  No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by checkmark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer  Accelerated Filer  Non-Accelerated Filer  Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold as of the last business day of the registrant's most recently completed second fiscal quarter

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was \$209,040,870.

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of the securities under a plan confirmed by a court. Yes  No

As of April 30, 2009, there were 103,091,858 shares of common stock of the Registrant outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

None.



**Explanatory Note**

This Amendment No. 1 on Form 10-K/A (this “Amendment”) amends NextWave Wireless Inc.’s (“we,” “us,” “our,” “the Company,” or “NextWave”) Annual Report on Form 10-K for the year ended December 27, 2008, originally filed with the Securities and Exchange Commission (the “SEC”) on April 2, 2009 (the “Original Filing”).

This Amendment is being filed to amend the Original Filing to include the information required by Items 10 through 14 of Part III of Form 10-K, which information was previously omitted from the Original Filing in reliance on General Instruction G(3) to Form 10-K. General Instruction G(3) to Form 10-K permits the information in the above referenced items to be included in the Form 10-K filing by incorporation by reference from our definitive proxy statement if such statement is filed no later than 120 days after our fiscal year-end. We filed our definitive proxy statement outside such 120-day period and therefore we are filing this Amendment to include Part III information in our Form 10-K. The reference on the cover of the Original Filing to the incorporation by reference to portions of our definitive proxy statement into Part III of the Original Filing is hereby deleted.

In accordance with Rule 12b-15 under the Exchange Act, Part III, Items 10 through 14 of the Original Filing are hereby amended and restated in their entirety, and Part IV, Item 15 of the Original Filing is hereby amended and restated in its entirety to include as exhibits updated certifications required by the Sarbanes-Oxley Act of 2002. This Amendment No. 1 does not amend or otherwise update any other information in the Original Filing. Accordingly, this Amendment should be read in conjunction with the Original Filing and with our filings with the SEC subsequent to the Original Filing. This Amendment does not reflect events occurring after the filing of the Original Filing or modify or update disclosures, including the exhibits to the Original Filing, affected by subsequent events.

FORM 10-K/A

NEXTWAVE WIRELESS INC.

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## **PART III**

### **Item 10. Directors, Executive Officers and Corporate Governance**

#### **CORPORATE GOVERNANCE**

##### **Board Committees**

Our Board of Directors has three standing committees: an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. Our Board of Directors has adopted charters for each of its standing committees. Copies of our committee charters are available without charge upon request directed to NextWave Wireless Inc. Investor Relations, 10350 Science Center Drive, Suite 210, San Diego, California 92121, and from our website at [www.nextwave.com](http://www.nextwave.com).

##### **Audit Committee**

Our Audit Committee assists the Board of Directors in fulfilling its responsibility relating to (a) the integrity of our financial statements, (b) our compliance with legal and regulatory requirements, (c) application of our codes of conduct and ethics as established by the Board of Directors, (d) our independent registered public accounting firm's qualifications, engagement, compensation and performance, their conduct of the annual audit of our financial statements, and their engagement to provide any other services, (e) performance of our system of internal controls, (f) preparation of the Audit Committee report, as required pursuant to SEC rules and (g) maintenance and oversight of procedures for addressing complaints about accounting matters. In discharging its duties, the Audit Committee has the sole authority to select (subject to stockholder ratification, which ratification is not binding on the Audit Committee), compensate, evaluate and replace the independent accountants, review and approve the scope of the annual audit, review and pre-approve the engagement of our independent accountants to perform audit and non-audit services, meet independently with our independent accountants and senior management, review the integrity of our financial reporting process and review our financial statements and disclosures and certain SEC filings.

The Board of Directors has determined that all three members of the Audit Committee, Mr. Douglas F. Manchester, Mr. Robert T. Symington and Judge William H. Webster are independent, and that Mr. Symington is qualified as an "audit committee financial expert", applying the listing standards of Nasdaq and in accordance with applicable rules of the SEC as of the date of this Amendment. Mr. Symington serves as chairman of the Audit Committee. Mr. Symington qualifies as an "audit committee financial expert" because of his relevant experience in the area of finance and financial matters, including management positions at various investment companies such as M.D. Sass and Avenue and advanced academic study in finance and accounting. In making Audit Committee independence assessments, the Board determined that Avenue Capital Group is not currently an affiliate of the Company based on the fact that Avenue has not exercised its rights under a Designated Director Agreement to nominate a member of the Board of Directors and does not currently hold voting securities because it has not exercised warrants or converted Third Lien Notes held by Avenue. The Board will continue to monitor the affiliate status of Avenue Capital Group in considering Mr. Symington's continued eligibility to serve on the Audit Committee.

The Audit Committee met ten times in 2008. The Audit Committee regularly holds meetings at which it meets with our independent registered public accounting firm and without management present.

##### **Compensation Committee**

Our Compensation Committee (a) administers our executive compensation program, (b) determines and approves targeted total compensation, as well as each individual compensation component for our executive officers, (c) determines and recommends to the Board of Directors equity-based plans and (d) reviews and approves any employee retirement plans, other benefit plans or any amendments thereto.

The members of our Compensation Committee are Mr. Rosen, Judge Webster and Mr. Symington, who serves as the chairman of the Compensation Committee. The Board of Directors has determined that all three members of the Compensation Committee are independent pursuant to the listing standards of Nasdaq.

Our Board of Directors has delegated to the Compensation Committee sole decision-making authority with respect to all compensation decisions for our executive officers, including determinations of annual incentive award payments and grants of equity awards. The Compensation Committee approves these payments and awards after considering our corporate performance and the individual performance of our executives (and considers the recommendations of our Chief Executive Officer in this regard). The Compensation Committee is also responsible for evaluating the performance of our Chief Executive Officer, in light of our corporate performance and his individual performance.



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The Compensation Committee's decisions are made with input from our Chief Executive Officer (except with respect to his own compensation) and, where appropriate, other senior executives. The Compensation Committee also considers information provided by and the input of our Human Resources department, which evaluates publicly available compensation information along with other sources of data. The Committee also considers our overall executive compensation policies and goals in making its decisions. A discussion and analysis of the Company's compensation policies and decisions regarding the Company's named executive officers as identified in the Summary Compensation Table included in this Amendment is contained in the Compensation Discussion and Analysis section of this Amendment.

To assist in performing its duties, the Compensation Committee has the authority to engage external compensation consultants and other advisors. In 2008, the Compensation Committee did not retain any consultants or advisors to assist it in formulating or making executive compensation decisions.

The Compensation Committee reviews and discusses with management the Compensation Discussion and Analysis included in this Amendment and determines whether to recommend to the Board of Directors that the Compensation Discussion and Analysis be included in this Amendment and the Company's Annual Report on Form 10-K. This recommendation is set forth in the Compensation Committee Report section of this Amendment.

The Compensation Committee met five times in 2008.

### **Nominating and Corporate Governance Committee**

Our Nominating and Corporate Governance Committee (a) identifies and recommends to the Board of Directors individuals qualified to serve as directors of our company and on committees of the Board of Directors, (b) reviews corporate governance, (c) reviews and recommends changes to the size of the Board of Directors, (d) reviews the manner in which conflicts of interest are addressed and (e) recommends to the Board of Directors any changes in director compensation.

The members of our Nominating and Corporate Governance Committee are Mr. Manchester, Mr. Rosen and Judge Webster, who serves as its chairman. As indicated, the Board of Directors has determined that all three members of the Nominating and Corporate Governance Committee are independent pursuant to the listing standards of Nasdaq.

The Nominating and Corporate Governance Committee met 1 time in 2008.

### **Designated Director Agreement**

In connection with our October 2008 issuance of Second Lien Notes, we entered into an agreement with Avenue Capital Group providing that Avenue Capital Group shall have the right to nominate a director to the Board of Directors as soon as the Board has a vacancy or at any election of directors by the Company's shareholders when there is not currently an Avenue Capital Group designated director serving on the Board. The agreement provides that Mr. Symington is not considered an Avenue Capital Group designated director for this purpose. Avenue Capital Group has elected not to nominate a director for election at the annual meeting but has the right to make an appointment to fill the vacancy created by the December 2008 resignation of Dr. Jones.

### **Stockholder Nominations**

A stockholder entitled to vote in the election of directors may nominate one or more persons for election as director at a meeting if written notice of that stockholder's intent to make the nomination has been given to us, with respect to an election to be held at an annual meeting of stockholders (A) not later than the close of business on the 90<sup>th</sup> day nor earlier than the close of business on the 120<sup>th</sup> day prior to the first anniversary of the date that our Proxy Statement is released to stockholders in connection with the previous year's annual meeting of stockholders, or (B) (i) if no annual meeting was held in the previous year or (ii) the date of the annual meeting is more than 30 calendar days before or more than 60 days after such anniversary date, notice by the stockholders to be timely must be so delivered not earlier than the close of business on the 120<sup>th</sup> day prior to such annual meeting and not later than the close of business on the later of the 90<sup>th</sup> day prior to such annual meeting or the 10<sup>th</sup> day following the day on which the date of the annual meeting is publicly announced by the Company. With respect to an election to be held at a special meeting of stockholders, written notice of that stockholder's intent to make the nomination shall have been given to us not less than ten (10) and not more than sixty (60) days before the date of the special meeting.

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The notice shall include the name and address of the stockholder and his or her nominees, a representation that the stockholder is entitled to vote at the meeting and intends to nominate the person, a description of all arrangements or understandings between the stockholder and each nominee, other information as would be required to be included in a Proxy Statement soliciting proxies for the election of the stockholder's nominees, and the consent of each nominee to serve as a director of the Company if so elected. We may require any proposed nominee to furnish other information as we may reasonably require to determine the eligibility of the proposed nominee to serve as a director of the Company.

As described above, the Company's By-Laws contain provisions which address the process by which a stockholder may nominate an individual to stand for election to the Board at the Company's annual meeting of stockholders. The Board has also adopted a formal policy concerning stockholder recommendations of Board candidates to the Nominating and Corporate Governance Committee. This policy is set forth in the Company's Nominating and Corporate Governance Committee charter, which is available on the Company's website at [www.nextwave.com](http://www.nextwave.com). Under this policy, the Nominating and Corporate Governance Committee considers director candidates recommended by stockholders who satisfy the notice, information and consent requirements set forth in the Company's By-Laws.

We may require any proposed nominee to furnish other information as we may reasonably require to determine the eligibility of the proposed nominee to serve as a director of the Company.

### **Attendance at Board and Committee Meetings**

It is our policy that directors are expected to dedicate sufficient time to the performance of their duties as a director, including by attending meetings of the stockholders, Board of Directors and committees of which they are a member.

In 2008, the Board of Directors held twenty two meetings (including regularly scheduled and special meetings). All directors attended at least 90% of the total number of meetings of the Board of Directors and committees of the Board of Directors on which such director served. All directors except Mr. Manchester attended our 2008 annual meeting of stockholders.

### **Stockholder Communications with the Board of Directors**

Our Board provides a process for stockholders to send communications to the Board of Directors.

Stockholders and other parties interested in communicating directly with the Board of Directors as a group, may do so by writing to the Board of Directors, c/o Secretary, 10350 Science Center Drive, Suite 210, San Diego, California 92121. The Secretary will review all correspondence and regularly forward to the Board of Directors a summary of all such correspondence that, in the opinion of the Secretary, deals with the functions of the Board of Directors or committees thereof or that the Secretary otherwise determines requires attention. Concerns relating to accounting, internal controls or auditing matters will immediately be brought to the attention of the Chairman of the Audit Committee. We have adopted a Whistleblower Policy, which establishes procedures for submitting these types of concerns, either personally or anonymously through a toll free telephone "hotline" operated by an independent party. A copy of our Whistleblower Policy is available on our website at [www.nextwave.com](http://www.nextwave.com).

### **Board of Directors**

We have a classified board of directors, divided into three classes, and the term of the Class III directors will expire on the date of our 2009 annual meeting of stockholders scheduled for June 11, 2009. The person nominated by the Board of Directors to be elected as Class III directors with a three-year term expiring at the 2012 Annual Meeting of Stockholders are described below. Messrs. Salmasi, Manchester and Symington are currently serving as Class III directors. The Board of Directors expects that each of the nominees will be available for election as a director. However, if by reason of an unexpected occurrence, one or more of the nominees is not available for election, the persons named in the form of proxy have advised that they will vote for such substitute nominees as the Board of Directors may propose.

Including the nominees, the Board of Directors currently consists of 6 directors, each of whom, other than the nominees, is described below. The term of the Class I directors shall expire at our 2010 annual meeting of stockholders, subject to the valid election and qualification of their respective successors. The term of the Class II directors shall expire at our 2011 annual meeting of stockholders, subject to the valid election and qualification of their respective successors.

We have entered into a binding commitment letter with Navation, Inc., an entity controlled by Allen Salmasi, our Chairman, to provide up to \$15 million in working capital financing. The terms of the commitment letter provide that Mr. Salmasi will be nominated to serve an additional three-year term as Chairman of the Board of Directors, subject to stockholder approval at the annual meeting.

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<b>Name and present position, if any, with the Company</b>	<b>Age, period served as a director, other business experience</b>
<p>Allen Salmasi</p> <p>Chairman</p> <p>Class III director</p>	<p>Mr. Salmasi, 54, is currently Chairman of the Board of Directors. Mr. Salmasi served as our Chief Executive Officer and President from the inception of our Company in 2005 through May 4, 2009, when he assumed a Chairman role with a special mandate for maximizing the value of our wireless spectrum assets. Previously, Mr. Salmasi served as Chairman and CEO of NextWave Telecom, Inc. ("NextWave Telecom") which he founded in 1995 and subsequently sold to Verizon Wireless in 2005. Prior to NextWave Telecom, Mr. Salmasi was a member of the Board of Directors, President of the Wireless Telecommunications Division, and Chief Strategic Officer of QUALCOMM Inc. He joined QUALCOMM in 1988 as a result of the merger of QUALCOMM and Omninet Corporation, which Mr. Salmasi founded in 1984. Mr. Salmasi initiated and led the development of CDMA technologies, standards and the associated businesses at QUALCOMM until 1995. At Omninet, he conceived and led the development of the first OmniTRACS system, which provides two-way messaging and position reporting services to mobile users.</p>
<p>Douglas F. Manchester</p> <p>Class III director</p>	<p>Mr. Manchester, 67, has served as a director of the Company since its inception. He is also chairman of Manchester Financial Group, LP. Mr. Manchester is one of San Diego's leading private developers. His development projects include hotels, high-rise office buildings, residential properties, industrial parks and championship golf courses and resorts.</p>
<p>Robert T. Symington</p> <p>Class III director</p>	<p>Mr. Symington, 45, has served as a director of the Company since its inception. Mr. Symington has served as a Portfolio Manager at Avenue Capital Group since 2004. Mr. Symington, through his prior management positions at M.D. Sass Investor Services and Resurgence Asset Management, was an early investor in NextWave Telecom.</p>
<p>James C. Brailean, Ph.D</p> <p>CEO, COO and President</p> <p>Class II director</p>	<p>Dr. Brailean, 47, has served as a director of the Company since May 2007. Effective on May 4, 2009, Mr. Brailean was appointed as our Chief Executive Officer, Chief Operating Officer and President. Dr. Brailean was co-founder of our subsidiary PacketVideo Corporation. Under Dr. Brailean's leadership, PacketVideo has become a leading independent supplier of embedded multimedia solutions for mobile phones and other devices in the world. A scientist who led the development of the MPEG-4 standards for transmission of video and audio over wireless networks, Dr. Brailean holds 16 key U.S. patents that enable advanced multimedia communications. Dr. Brailean received his doctorate in electrical engineering from Northwestern University. He holds a Master's of Science degree in Electrical Engineering from the University of Southern California and a Bachelor's of Science degree in Electrical Engineering from the University of Michigan. Dr. Brailean serves on the Board of Directors of DivX, Inc., a Nasdaq-listed digital media company.</p>
<p>William H. Webster</p> <p>Class II director</p>	<p>Judge Webster, 85, has served as a director of the Company since its inception. From 1991 through 2008, Judge Webster served as a senior partner in Milbank, Tweed, Hadley &amp; McCloy LLP's Washington office. Judge Webster is now a retired partner and continues to specialize in arbitration, mediation and internal investigation.</p> <p>Prior to joining Milbank, Judge Webster began a long and illustrious career in public service. Judge Webster was U.S. Attorney for the Eastern District of Missouri, then a member of the Missouri Board of Law Examiners. In 1970, he was appointed a judge of the U.S. District Court for the Eastern District of Missouri, and then elevated to the U.S. Court of Appeals for the Eighth Circuit. Judge Webster resigned the judgeship to head the Federal Bureau of Investigation for nine years. In 1987, he was sworn in as Director of the Central Intelligence Agency. He led the CIA until his retirement from public office in 1991. Judge Webster has received numerous awards for public service and law enforcement and holds honorary degrees from several colleges and universities. Judge Webster currently serves as Chairman of the Homeland Security Advisory Council.</p>



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Jack Rosen  
Class I director

Mr. Rosen, 62, has served as a director of the Company since its inception. Mr. Rosen is chief executive of several commercial and residential real estate firms and the current Chairman of the American Jewish Congress. In addition, Mr. Rosen oversees a wide array of healthcare, cosmetic and telecommunications business ventures throughout the U.S., Europe and Asia. Active in international government and political affairs, Mr. Rosen has participated in numerous commissions and councils for President Bush and former President Clinton. Mr. Rosen is currently a member of the Council on Foreign Relations.

### Executive Officers

The following persons currently serve as our executive officers in the capacities indicated below. Our executive officers are responsible for the management of our operations, subject to the oversight of the Board of Directors.

Chairman	Allen Salmasi
Chief Executive Officer, Chief Operating Officer and President	Dr. James Brailean
Executive Vice President, Chief Legal Counsel and Secretary	Frank A. Cassou
Executive Vice President, Chief Financial Officer	Francis J. Harding

Biographical information for our executive officers who do not serve on the Board of Directors is presented below.

<b>Name</b>	<b>Position</b>
Frank A. Cassou	Frank A. Cassou, 51, is Executive Vice President, Corporate Development and Chief Legal Counsel and Secretary of the Company. Mr. Cassou held similar positions at NextWave Telecom Inc., which he joined in 1996. Prior to joining the Company, Mr. Cassou was a partner at the law firm of Cooley Godward LLP, where he practiced corporate law representing telecommunications and technology companies. He was outside corporate counsel to QUALCOMM Inc. from June 1991 through February 1996, representing the company in its public financing and acquisition transactions, licensing agreements and the formation of strategic partnerships.
Francis J. Harding	Francis J. Harding, 64, has served as Chief Accounting Officer of the Company since August 2005. Mr. Harding has served 18 years in senior financial management roles for international wireless carriers and wireless technology development companies. Prior to joining the Company, Mr. Harding served as Vice President, Network Finance and Vice President, Finance for Leap Wireless International. He previously served ten years at QUALCOMM, Inc., where he held senior positions, including Vice President, Corporate Controller, Vice President Finance, CDMA and Vice President Finance, International. Formerly, Mr. Harding served as Executive Vice President and CFO of Monitor Technologies, Inc., in addition to senior financial roles at LORAL Corporation. Mr. Harding earned a bachelor degree in mathematics from the University of Massachusetts and an MBA from Alliant International University.

**Code of Business Conduct and Ethics**

We have adopted a Code of Business Conduct and Ethics (the "Code"), that applies to all of our directors, officers and employees, including our principal executive officer, principal financial officer and principal accounting officer. Copies of our Code are available without charge upon requests directed to Investor Relations, 10350 Science Center Drive, Suite 210, San Diego, California 92121, and from our website at [www.nextwave.com](http://www.nextwave.com). Any amendments to, or waivers under, our Code which are required to be disclosed by the rules promulgated by the SEC will be disclosed on the Company's website at [www.nextwave.com](http://www.nextwave.com).

**Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Securities Exchange Act of 1934 requires our executive officers and directors, and persons who beneficially own more than 10% of a registered class of our equity securities, to file reports of ownership and changes in ownership with the SEC. Based solely upon a review of the copies of such forms furnished to us and written representations from our executive officers, directors and greater than 10% beneficial stockholders, we believe that during the year ended December 27, 2008, all persons subject to the reporting requirements of Section 16(a) filed the required reports on a timely basis.



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*The information contained in this Amendment No. 1 to our Annual Report on Form 10-K with respect to the charters of the Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee, the description of the Audit Committee and the independence of the non-management members of the Board of Directors shall not be deemed to be "soliciting material" or to be "filed" with the Securities and Exchange Commission, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporates it by reference in a filing.*

### **Item 11. Executive Compensation**

#### **EXECUTIVE COMPENSATION**

##### **COMPENSATION DISCUSSION AND ANALYSIS**

This section provides information regarding the compensation program in place for the persons serving as our executive officers at the end of fiscal 2008 (these executive officers are referred to in this Compensation Discussion and Analysis and in the Summary Compensation Table included in this Amendment as the "Named Executive Officers"). These persons include Mr. Salmasi, our Chairman, who served as our Chief Executive Officer ("CEO") until May 4, 2009, Mr. Alex, who served as our Chief Financial Officer ("CFO") until May 4, 2009, Dr. William Jones, who served as Chief Executive Officer of NextWave Network Products until December 24, 2008 and Mr. Cassou, Dr. Brailean and Mr. Salony, the three most highly-compensated individuals other than our CEO and CFO who were serving as executive officers at fiscal year-end.

#### **Introduction**

NextWave Wireless Inc. is a holding company for mobile multimedia businesses and a significant wireless spectrum portfolio. As a result of our global restructuring initiative, our continuing operations are focused on two key segments: Multimedia, consisting of the operations of our wholly owned subsidiary PacketVideo, and Strategic Initiatives, focused on the management of our wireless spectrum interests.

In the second half of 2008, we commenced the implementation of our global restructuring initiative in an effort to reduce our working capital requirements, narrow our business focus and reorganize our operating units. Key results of this initiative include a 41% reduction in our global workforce, the divestiture of our IPWireless network infrastructure business, the discontinuation of operations at our GO Networks, Cygnus, Global Services and NextWave Networks Products Support infrastructure businesses, and the closing of several facilities throughout the world. Additionally, in the first quarter of 2009, we wound down our semiconductor operations and terminated approximately 190 employees. We anticipate that further implementation of our global restructuring initiative will result in additional headcount reductions and operating unit divestitures or discontinuations, including the divestiture of our WiMax Telecom business and the sale of certain assets of our semiconductor business.

Our compensation decisions during 2008 and 2009 have been driven by our need to cut costs and restructure our business in order to continue as a going concern. As we complete our restructuring activities, we will consider compensation programs which are responsive to our goals of further developing our Multimedia business and maximizing the value of our significant portfolio of wireless spectrum assets. In order to successfully complete our restructuring activities and maximize the value of our remaining businesses, our executives must be capable of fulfilling our complex restructuring and cost-minimizing strategies, identifying new opportunities for our Multimedia business and determining and executing on the best alternatives for maximizing the value of our spectrum assets.

Our Multimedia business operates in a highly complex and competitive business environment, which is being constantly reshaped by sweeping technological advances, rapidly changing market requirements, and the emergence of new competitors. To thrive in this environment, we must

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continuously develop and refine new products and technologies, devise new business models, and demonstrate an ability to quickly identify and capitalize on new business opportunities. To achieve these objectives, our Multimedia business will continue to need a highly talented and seasoned team of technical and business professionals. talented engineers and other employees with the skills and experience to develop and commercialize mobile broadband products and technologies. Many of the direct competitors of our Multimedia business are well-established, international leaders in the wireless communications industry that have significantly greater financial, technical development, and marketing resources than we do. As a result, the compensation packages that we must use to attract and retain skilled employees will be influenced by the compensation practices of these other organizations.

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As we emerge from a period of transition due to our global restructuring efforts, our challenge will be to develop a compensation program that is relevant to our continuing businesses and will enable us to retain, motivate, and appropriately reward our executives and other key employees to successfully execute our business strategy and maximize stockholder value.

### Compensation Philosophy and Policies

During 2008, we compensated our executives through a mix of base salary, annual incentive awards, and long-term incentive compensation (in the form of equity awards) that is designed to be competitive with comparable companies in the Semiconductor, Software, Telecommunications, and Infrastructure industries operating within our geographic regions with whom we compete for executive talent. In allocating compensation among these components, we believe that the compensation of our executives, the individuals who have the greatest ability to influence our performance, should be predominately performance-based.

The market for experienced executives is highly competitive in the various industries in which we operate, and includes several well-established, international organizations, as well as our direct business competitors. Consequently, we have historically monitored the compensation practices of these companies, as well as those within our industries generally, to ensure that our executive compensation program reflects current market trends. In fiscal 2008, as in past years, our Human Resources department prepared compensation market data for our management and the Compensation Committee of our Board of Directors to use, based on information that it compiled from publicly-available proxy statements and survey data for comparable industry positions. Our Human Resources department screens the survey data to confirm that the information is appropriate given our size, type, and mix of businesses, and the industries in which we compete for executive talent.

It is important to note that the compensation market data prepared by our Human Resources department provides only a reference point for our management in formulating compensation proposals and the Compensation Committee in making executive pay decisions. In particular, the Compensation Committee uses this information solely to validate the range of competitive pay for our executives. It is not used to determine an executive's total compensation or any individual compensation component. The Compensation Committee's decisions about an executive's compensation relative to the market considers the scope, complexity, and responsibility of the executive's position in relation to positions in the sources of data. The Compensation Committee exercises its judgment in interpreting the compensation market data. As a result, an executive's actual compensation relative to the compensation market data is a result of the Compensation Committee's assessment of our financial results, current business condition, and the individual performance factors described below. In the future, as we continue to grow, we expect to conduct periodic benchmarking reviews to ensure that our executive compensation, both in terms of targeted total compensation, as well as the mix and amounts of individual compensation components, is competitive within the industries in which we compete for executive talent.

For 2008, we set the total cash compensation for our executives (that is, the sum of base salary plus target annual incentive award opportunities) at levels that we believe are comparable to and competitive with the companies with whom we compete for executive talent. Consequently, the targeted total cash compensation for Mr. Salmasi, our CEO, was set at \$1,184,123, consisting of his then-base salary of \$777,000 and a target annual incentive award opportunity equal to 100% of his base salary. The Compensation Committee believed that, at this level, Mr. Salmasi's targeted total cash compensation was in line with the prevailing market practices and the importance of his individual contributions to the Company. In the case of the other Named Executive Officers, their targeted total cash compensation ranged from approximately \$450,000 to approximately \$800,000. The Compensation Committee believed that the targeted total cash compensation of Messrs. Alex, Cassou, Salony and Drs. Brailean and Jones was consistent with that of comparable positions at other companies as reflected in the compensation market data and their individual contributions and roles during the 2008 fiscal year. For fiscal 2008, Mr. Cassou had a target annual incentive award opportunity equal to 75% of his base salary while Mr. Alex and Drs. Brailean and Jones had target annual incentive award opportunities equal to 50% of their base salaries. The targeted total cash compensation of Drs. Brailean and Jones was increased in fiscal 2008 to reflect their new positions and responsibilities as Chief Executive Officer – NextWave Mobile Products and Chief Executive Officer – NextWave Network Products, respectively. We believe that these total cash compensation opportunities were consistent with our overall compensation philosophy prior to the commencement of our global restructuring activities in 2008.

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We have followed a flexible approach to compensation that involves establishing salary grades and target annual incentive award opportunities for all of our employees, including our executives, and evaluating performance after fiscal year-end to determine actual incentive award payments. For the past three years, fiscal 2005 through 2007, our annual incentive awards have been determined after the end of our fiscal year based on the size of a fixed bonus pool which is then allocated among our employees, including our executives, based on their salary grade and an assessment of corporate and individual performance in accordance with our CEO's recommendations (except with respect to his own award). In connection with our global restructuring activities, we determined that we would not pay any annual incentive awards for fiscal 2008 performance.

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Equity awards have historically formed an important component of our compensation program. We have granted equity awards to all new hires, including new executives, based on their salary grade to provide them with an appropriate long-term incentive compensation opportunity. Our founding executives received such baseline awards upon our emergence from the Chapter 11 reorganization in April 2005 as a new wireless technology company. Drs. Brailean and Jones received baseline awards following our acquisitions of PacketVideo in July 2005 and IPWireless in May 2007, respectively. In addition, a significant portion of the annual incentive awards paid in respect of performance for the short fiscal 2005 period, fiscal 2006 and fiscal 2008 were paid in equity, reflecting our desire to tie compensation more closely to our long-term performance and to conserve our cash resources for the growth of our business.

### **Oversight of Executive Compensation Program**

The Compensation Committee administers our executive compensation program. The Compensation Committee determines and approves targeted total cash compensation, as well as each individual compensation component, based on its review and evaluation of the proposals and recommendations presented by our CEO (except with respect to his own compensation). Our CEO is typically present at Committee meetings where executive compensation and corporate and individual performance are discussed and evaluated (except where his own compensation and performance are discussed). Only Compensation Committee members are allowed to vote on decisions regarding executive compensation.

In determining targeted total compensation, the Compensation Committee reviews each component and the mix of compensation that comprises each executive's total compensation package. This process includes comparing the compensation market data prepared by our Human Resources department to our executives as a group, or individually in the case of our CEO. To support our compensation objectives, the Compensation Committee may make adjustments to our executives' compensation components to bring them closer to that of the companies with whom we compete for executive talent. For example, we do not offer our employees retirement benefits and therefore almost none of our executives' total compensation is attributed to retirement pay. We believe that this is an appropriate departure from the practices of many of the larger companies with whom we compete for executive talent because we provide a larger allocation of equity compensation, which provides significant long-term income potential. In addition to adjusting the allocation among compensation components for our executives, or the CEO, as the case may be, individual pay may differ for any executive based on individual performance, tenure, and a subjective assessment of future potential. Adjustments also may be made to base salary or incentive compensation based on internal equity among our executives.

For a more complete description of the responsibilities of the Compensation Committee, see "CORPORATE GOVERNANCE – Board Committees – Compensation Committee" included in this Amendment, and the Compensation Committee's charter, which is posted on our website at [www.nextwave.com](http://www.nextwave.com).

### **Compensation Components**

In fiscal 2008, the primary components of our executive compensation program were:

- § base salary
- § annual incentives
- § equity compensation
- § other benefits

#### ***Base Salary***

We use base salary to fairly and competitively compensate our executives, including the Named Executive Officers, for the jobs we ask them to perform. We view base salary as the most stable component of our executive compensation program, as this amount is not at risk.

We believe that the base salaries of our executives should be targeted at or above the median of base salaries for executives in similar positions with similar responsibilities at comparable companies, consistent with our compensation philosophy. Because of our emphasis on performance-based compensation for executives, base salary adjustments are generally made only when we believe there is a significant deviation from the market or an increase in responsibility. The Compensation Committee reviews the base salary levels of our executives each year to determine whether an adjustment is warranted or necessary.