

# **FORM 10-Q**

**NextWave Wireless Inc. - WAVE**

**Filed: August 10, 2010 (period: July 03, 2010)**

Quarterly report which provides a continuing view of a company's financial position

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended July 3, 2010

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)

20-5361360

(IRS Employer  
Identification No.)

12264 El Camino Real, Suite 305, San Diego, California

(Address of principal executive offices)

92130

(Zip Code)

(858) 480-3100

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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 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   
(Do not check if a 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

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

As of August 2, 2010, there were 22,396,411 shares of the Registrant's common stock outstanding.



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**PART I. FINANCIAL INFORMATION**

**ITEM 1. Financial Statements**

**NEXTWAVE WIRELESS INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except par value data)  
(unaudited)

	<u>July 3, 2010</u>	<u>January 2, 2010</u>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 31,576	\$ 15,056
Restricted cash and marketable securities	3,634	24,088
Wireless spectrum licenses held for sale	59,048	62,868
Prepaid expenses and other current assets	551	2,546
Current assets of discontinued operations	<u>68,285</u>	<u>23,678</u>
Total current assets	163,094	128,236
Wireless spectrum licenses, net – continuing operations	405,325	409,156
Property and equipment, net	3,821	213
Other assets, including assets measured at fair value of \$0 and \$1,227 at July 3, 2010 and January 2, 2010, respectively	5,126	6,959
Other noncurrent assets of discontinued operations	<u>—</u>	<u>58,226</u>
Total assets	<u>\$ 577,366</u>	<u>\$ 602,790</u>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
Current liabilities:		
Accounts payable	\$ 1,307	\$ 1,229
Accrued expenses	7,891	8,196
Current portion of long-term obligations	62,134	86,154
Other current liabilities	136	10,283
Current liabilities of discontinued operations	<u>28,117</u>	<u>30,371</u>
Total current liabilities	99,585	136,233
Deferred income tax liabilities	88,867	88,958
Long-term obligations, net of current portion	729,282	641,950
Other liabilities	5,674	9,577
Long-term liabilities and deferred credits of discontinued operations	<u>—</u>	<u>1,729</u>
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock, \$0.001 par value; 25,000 shares authorized; 355 shares designated as Series A Senior Convertible Preferred Stock; no other shares issued or outstanding	—	—
Common stock, \$0.007 par value; 57,143 shares authorized; 22,494 and 22,434 shares issued and outstanding at July 3, 2010 and January 2, 2010, respectively	157	157
Additional paid-in-capital	886,521	884,321
Accumulated other comprehensive income	17,823	14,437
Accumulated deficit	<u>(1,265,052)</u>	<u>(1,190,520)</u>
Stockholders' deficit attributed to NextWave	(360,551)	(291,605)
Noncontrolling interest in subsidiary	<u>14,509</u>	<u>15,948</u>
Total stockholders' deficit	<u>(346,042)</u>	<u>(275,657)</u>
Total liabilities and stockholders' deficit	<u>\$ 577,366</u>	<u>\$ 602,790</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

**NEXTWAVE WIRELESS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)  
(unaudited)

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 3, 2010</b>	<b>June 27, 2009</b>	<b>July 3, 2010</b>	<b>June 27, 2009</b>
Operating expenses:				
General and administrative	\$ 8,023	\$ 11,575	\$ 13,859	\$ 20,659
Sales and marketing	—	80	—	207
Asset impairment charges	—	83	—	9,562
Restructuring charges (credits)	22	(717)	15	2,038
Total operating expenses	8,045	11,021	13,874	32,466
Gain (loss) on sales of wireless spectrum licenses	(152)	668	12	671
Loss from operations	(8,197)	(10,353)	(13,862)	(31,795)
Other income (expense):				
Interest income	247	82	514	304
Interest expense	(54,175)	(39,123)	(98,263)	(75,863)
Gain on extinguishment of debt	—	—	37,988	—
Other income (expense), net	(1,151)	152	9,381	(1,349)
Total other income (expense), net	(55,079)	(38,889)	(50,380)	(76,908)
Loss from continuing operations before income taxes	(63,276)	(49,242)	(64,242)	(108,703)
Income tax benefit (provision)	—	1	—	(30)
Net loss from continuing operations	(63,276)	(49,241)	(64,242)	(108,733)
Loss from discontinued operations, net of gains (losses) on divestiture of discontinued operations of \$(4,617), \$(2), \$(4,616) and \$51, income tax provisions of \$10, \$76, \$107 and \$232, and net loss attributed to noncontrolling interest of \$1,671, \$0, \$1,237 and \$0, respectively	(7,906)	(6,246)	(10,290)	(28,933)
Net loss attributed to NextWave	\$ (71,182)	\$ (55,487)	\$ (74,532)	\$ (137,666)
Amounts attributed to NextWave common shares:				
Loss from continuing operations, net of tax	\$ (63,276)	\$ (49,241)	\$ (64,242)	\$ (108,733)
Loss from discontinued operations, net of tax	(7,906)	(6,246)	(10,290)	(28,933)
Net loss attributed to NextWave common shares	\$ (71,182)	\$ (55,487)	\$ (74,532)	\$ (137,666)
Net loss per share attributed to NextWave common shares – basic and diluted				
Continuing operations	\$ (2.60)	\$ (2.21)	\$ (2.65)	\$ (5.05)
Discontinued operations	(0.33)	(0.28)	(0.42)	(1.35)
Net loss	\$ (2.93)	\$ (2.49)	\$ (3.07)	\$ (6.40)
Weighted average shares used in per share calculation	24,279	22,288	24,256	21,503

The accompanying notes are an integral part of these condensed consolidated financial statements.

**NEXTWAVE WIRELESS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)  
(unaudited)

	<b>Six Months Ended</b>	
	<b>July 3, 2010</b>	<b>June 27, 2009</b>
<b>OPERATING ACTIVITIES</b>		
Net loss	\$ (75,769)	\$ (137,666)
Loss from discontinued operations, net of tax	(11,527)	(28,933)
Loss from continuing operations	(64,242)	(108,733)
Adjustments to reconcile loss from continuing operations to net cash used in operating activities of continuing operations:		
Amortization of intangible assets	3,838	3,838
Depreciation	160	116
Non-cash share-based compensation	611	1,218
Non-cash interest expense	97,981	70,867
Gain on extinguishment of debt	(37,988)	—
Asset impairment charges	—	9,563
Other non-cash adjustments	917	(501)
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	718	303
Other assets	(226)	(362)
Accounts payable and accrued liabilities	(3,980)	(4,573)
Other current liabilities	(8,162)	(516)
Net cash used in operating activities of continuing operations	<u>(10,373)</u>	<u>(29,451)</u>
<b>INVESTING ACTIVITIES</b>		
Proceeds from the sale of ARS securities	24,023	—
Payments received on notes receivable	7,100	—
Proceeds from the sale of wireless spectrum licenses	683	5,475
Purchase of property and equipment	(3,803)	—
Other, net	1,054	231
Net cash provided by investing activities of continuing operations	<u>29,057</u>	<u>5,706</u>
<b>FINANCING ACTIVITIES</b>		
Proceeds from long-term obligations	25,000	(6,731)
Payments on long-term obligations	(25,256)	(6,731)
Proceeds from the sale of common shares	141	—
Net cash used in financing activities of continuing operations	<u>(115)</u>	<u>(6,731)</u>
Cash provided (used) by discontinued operations:		
Net cash provided by (used in) operating activities of discontinued operations	3,330	(13,654)
Net cash provided by (used in) investing activities of discontinued operations	(394)	159
Net cash used in financing activities of discontinued operations	(7,100)	(39)
Net cash provided (used) by discontinued operations	<u>(4,164)</u>	<u>(13,534)</u>
Effect of foreign currency exchange rate changes on cash	(1,073)	270
Net increase (decrease) in cash and cash equivalents	13,332	(43,740)
Cash and cash equivalents, beginning of period	20,512	61,517
Cash and cash equivalents, end of period	33,844	17,777
Less cash and cash equivalents of discontinued operations, end of period	(2,268)	(9,908)
Cash and cash equivalents of continuing operations, end of period	<u>\$ 31,576</u>	<u>\$ 7,869</u>
<b>NONCASH FINANCING ACTIVITIES</b>		
Senior, Second and Third Lien Notes issued to noteholders in exchange for debt modification fees	\$ 21,249	\$ —
Fair value of warrants issued in connection with the Asset Sale Condition of the Second Lien Notes	\$ —	\$ 1,719

The accompanying notes are an integral part of these condensed consolidated financial statements.

NEXTWAVE WIRELESS INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**1. Basis of Presentation and Significant Accounting Policies**

***Financial Statement Preparation***

The condensed consolidated financial statements of NextWave Wireless Inc. (together with its subsidiaries, “NextWave”, “we”, “our” or “us”) are unaudited. We have prepared the condensed consolidated financial statements in accordance with the rules and regulations of the United States Securities and Exchange Commission (“SEC”), and therefore, certain information and disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. In the opinion of management, the accompanying condensed consolidated financial statements for the periods presented reflect all adjustments necessary to fairly state our financial position, results of operations and cash flows, including adjustments related to asset impairment write-offs and restructuring-related charges. These condensed consolidated financial statements should be read in conjunction with our audited financial statements for the year ended January 2, 2010, from which the balance sheet data was derived, included in our Annual Report on Form 10-K filed with the SEC on April 2, 2010.

***Basis of Presentation and Liquidity***

The accompanying consolidated financial statements have been prepared assuming that we will continue as a going concern. This basis of accounting contemplates the recovery of our assets and the satisfaction of our liabilities in the normal course of business. We generated net losses attributable to NextWave of \$74.5 million and \$137.7 million for the six months ended July 3, 2010 and June 27, 2009, respectively, and have an accumulated deficit of \$1.3 billion at July 3, 2010. Our net loss from continuing operations of \$64.2 million for the six months ended July 3, 2010 includes a \$38.0 million noncash gain on extinguishment of debt resulting from the debt modification of our Third Lien Subordinated Secured Convertible Notes due 2011 (the “Third Lien Notes”) in March 2010, as described below, which was treated as an extinguishment of debt for accounting purposes. Without this gain, we would have reported a loss from continuing operations of \$102.2 million for the six months ended July 3, 2010. We used cash from operating activities of our continuing operations of \$10.4 million and \$29.5 million during the six months ended July 3, 2010 and June 27, 2009, respectively. Our total unrestricted cash and cash equivalents held by continuing operations at July 3, 2010 totaled \$31.6 million. We had net working capital of \$63.5 million at July 3, 2010.

We have funded our operations, business combinations, strategic investments and wireless spectrum license acquisitions primarily with the \$550.0 million in cash received in our initial capitalization in April 2005, the net proceeds of \$295.0 million from our issuance of our Senior Secured Notes (the “Senior Notes”) in 2006 and 2010, the net proceeds of \$351.1 million from our issuance of Series A Senior Convertible Preferred Stock (the “Series A Preferred Stock”) in March 2007, which, in October 2008, we exchanged for Third Lien Notes in the aggregate principal amount of \$478.3 million, and the net proceeds of \$101.0 million from our issuance of Senior Subordinated Secured Second Lien Notes (the “Second Lien Notes”) in October 2008 and July 2009. We did not receive any proceeds from the issuance of the Third Lien Notes.

In an effort to reduce our future working capital requirements and in order to comply with the terms of our Senior Notes, Second Lien Notes and Third Lien Notes, in the second half of 2008, our Board of Directors approved the implementation of a global restructuring initiative, pursuant to which we have divested, either through sale, dissolution or closure, our operating business segments. The actions completed as a result of our global restructuring initiative are described in more detail below under the heading “Discontinued Operations”.

Effective as of March 16, 2010, we entered into an Amendment and Limited Waiver (the “Amendment and Waiver”) to the agreements governing our Senior Notes, Second Lien Notes and Third Lien Notes. Pursuant to the Amendment and Waiver, the maturity date of our Senior Notes was extended from July 17, 2010 to July 17, 2011, with an additional extension to October 17, 2011 if certain conditions are met, including the pendency of asset sales that would yield net proceeds sufficient to repay all then-outstanding Senior Notes. In addition, the maturity date of our Second Lien Notes was extended from

December 31, 2010 to November 30, 2011. As a result of the Amendment and Waiver, the interest payable on our Senior Notes and Second Lien Notes was increased to a rate of 15% per annum and the interest payable on our Third Lien Notes was increased to a rate of 12% per annum initially, increasing 1% per annum on each of December 31, 2010, March 30, 2011, June 30, 2011 and September 30, 2011 to a maximum of 16%. After giving effect to the Amendment and Waiver, all Notes will receive only payment-in-kind interest for the full term of such Notes, unless we elect to pay cash interest, and the redemption premium on the Notes was eliminated. The Amendment and Waiver reduced the requirement to maintain a minimum cash balance from \$5.0 million to \$1.0 million and, after payment in full of certain designated Senior Notes with an aggregate principal amount of \$56.5 million at July 3, 2010 and the Senior Incremental Notes (as defined below) with an aggregate principal amount of \$25.5 million at July 3, 2010, permits us to retain up to \$12.5 million of asset sale proceeds for general working capital purposes and permitted investments. As consideration for the Amendment and Waiver, we paid an amendment fee to each Holder through the issuance of additional Notes under the applicable Note Agreements in an amount equal to 2.5% of the outstanding principal and accrued and unpaid interest on such Holder's existing Notes.

As permitted by the Amendment and Waiver, in order to fund our working capital needs and permitted investments pending completion of asset sales, we issued \$20.0 million and \$5.0 million in additional Senior Notes (the "Senior Incremental Notes") to Avenue Capital Management II, L.P., acting on behalf of its managed investment funds signatory thereto ("Avenue"), and Solus Core Opportunities Master Fund Ltd and its affiliates and co-investors ("Solus"), respectively. As with the other Senior Notes, amounts outstanding under the Senior Incremental Notes bear interest at a rate of 15% per annum, payable in-kind unless we elect to pay cash, and are secured by a first lien on the same assets securing our Senior Notes, on a pari passu basis. No commitment fee or structuring fee was payable in connection with the issuance of the Senior Incremental Notes.

The Amendment and Waiver to our Third Lien Notes, which increased the interest rate payable on our Third Lien Notes, was determined to have been accomplished with debt instruments that are substantially different, in accordance with generally accepted accounting principles, resulting in an effective extinguishment of the existing Third Lien Notes and a new issue of Third Lien Notes as of the amendment date for accounting purposes. The new issue of Third Lien Notes was recorded at fair value using a discount rate of 40%, and that amount was used to determine the net debt extinguishment gain of \$38.0 million recognized during the six months ended July 3, 2010, in other income in the accompanying consolidated statements of operations. The net gain of \$38.0 million was determined as the difference between the remaining unamortized discount under the extinguished Third Lien Notes of \$123.1 million and the new discount of \$164.8 million, plus \$9.6 million of embedded derivative liabilities that were eliminated at the date of the extinguishment, partially offset by \$13.3 million in fee notes issued to the Third Lien noteholders. The new discount of \$164.8 million is amortized using the effective interest rate method over the remaining term of the Third Lien Notes due December 2011 which will significantly increase our interest expense for financial reporting purposes.

In 2010, we have capital expenditure needs associated with certain build-out or substantial service requirements which apply to our licensed wireless spectrum, which generally must be satisfied as a condition of license renewal. The substantial service build-out deadline for our domestic Wireless Communication Services ("WCS") spectrum was July 21, 2010 under the Federal Communication Commission ("FCC") rules in existence at that time. However, the FCC adopted new rules on May 20, 2010, that, when effective, (anticipated to be September 1, 2010) purported to replace the July 21, 2010 substantial service requirements with new requirements that must be met 42 and 72 months after the date that new WCS technical and service rules become effective. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. While we believe we have made the capital expenditures required to complete the applicable WCS build-out requirements, we may be required to make additional capital expenditures to comply with the new rules if the FCC does not accept our substantial service showings under the rules in effect on July 20, 2010. The substantial service deadline for Educational Broadband Service and Broadband Radio Service ("EBS/BRS") spectrum is May 1, 2011; however, most of our EBS leases require us to complete most build out activities in 2010, in advance of the FCC's substantial service deadline. Failure to meet our service requirements could result in forfeiture of the applicable licenses.

We believe that the completion of our asset divestiture and cost reduction actions, our current cash and cash equivalents, our ability to pay payment-in-kind interest in lieu of cash interest to the holders of our secured notes, and access to \$12.5 million of future asset sales proceeds as permitted by our secured note agreements will allow us to meet our estimated operational cash requirements at least through June 2011. Should we be unable to achieve the revenues and/or cash flows through June 2011 as contemplated in our current operating plan, or if we were to incur significant unanticipated expenditures in excess of proceeds available to us through asset sales, we will seek to identify additional capital resources including the use of our remaining \$10.0 million of incremental Second Lien Notes debt basket, and will implement certain additional actions to reduce our working capital requirements including staff reductions.

### ***Reverse Stock Split***

Effective June 21, 2010 we amended our Amended and Restated Certificate of Incorporation to effect a 1-for-7 reverse stock split. The primary purpose of the reverse stock split was to raise the per share trading price of our common stock to seek to maintain the listing of our common stock on The NASDAQ Stock Market. At the effective time of the reverse stock split, every seven shares of our pre-split common stock, with a par value \$0.001 per share, was automatically converted into one share of post-split common stock, with a par value \$0.007 share. The number of authorized shares of our common stock was reduced accordingly by a ratio of 1-for-7 from 400 million to 57.1 million shares. Outstanding stock incentive awards and shares available for future grants were also adjusted to give effect to the reverse split. In settlement of fractional shares resulting from the reverse split, we made a cash payment based on the average closing sales price of our common stock for the ten trading days immediately preceding the effective time.

### ***Delisting of Our Common Stock***

On October 7, 2008, we received a Staff Deficiency Letter from NASDAQ notifying us that we were not in compliance with NASDAQ's Marketplace Rule 5450(a)(1) (the "Rule") because the closing bid price for our common stock had, for the preceding 30 consecutive business days, closed below the minimum \$1.00 per share requirement for continued listing. In accordance with NASDAQ Marketplace Rule 5810(c)(3)(A), we were provided a period of 180 calendar days to regain compliance. On October 16, 2008, NASDAQ announced that they had suspended the enforcement of the Rule until January 19, 2009, and as a result, the period during which we had to regain compliance was extended to July 10, 2009. On July 15, 2009, NASDAQ announced that they had determined to continue the temporary suspension of the Rule until July 31, 2009, and as a result, the period during which we had to regain compliance was extended to January 21, 2010. On January 22, 2010, we received a Staff Determination letter from the Listing Qualifications Department of NASDAQ indicating that our common stock would be subject to delisting from The NASDAQ Global Market because of non-compliance with the Rule, unless we requested a hearing before a NASDAQ Listing Qualifications Panel (the "Panel") by the close of business on January 29, 2010. We requested a hearing on the matter and such hearing occurred on February 25, 2010. On March 26, 2010, the Panel granted our request for continued listing, subject to the conditions that on or before May 1, 2010, we must inform the Panel that we have filed a proxy statement for our annual meeting of stockholders including a vote on a reverse stock split in a ratio sufficient to meet the \$1.00 per share requirement for continued listing and on or before July 21, 2010, we must have evidenced a closing bid price of \$1.00 or more for a minimum of ten prior consecutive trading days. On July 21, 2010, the Panel notified us that our stock had not met this requirement and that our common stock would be delisted from the NASDAQ effective July 23, 2010. Pink OTC Markets, Inc. informed us that our stock was eligible to begin trading immediately on the OTCQB as of the open of trading on July 23, 2010 and the stock currently is trading on that market under the symbol WAVE.

### ***Discontinued Operations and Segment Reporting***

On July 30, 2010, we signed a definitive agreement for the sale of our remaining 65% stock ownership in our PacketVideo Corporation ("PacketVideo") subsidiary to NTT DOCOMO, Inc. ("DOCOMO") and continued to pursue wireless spectrum license sales, the net proceeds of which we will retain \$12.5 million for general working capital purposes and permitted investments and the remainder of

which will be used to reduce our outstanding indebtedness, thereby reducing interest accruals payable in future years. We are also actively pursuing the sale or wind-down of various remaining portions of our spectrum operations in South America and Europe.

We have classified the businesses comprising our Multimedia and Semiconductor segments as well as our WiMAX Telecom, Inquam and South American businesses, which were previously reported in our Strategic Initiatives segment, as discontinued operations for all periods presented.

Our continuing operations are comprised of our strategic initiatives segment, which manages our portfolio of licensed wireless spectrum assets. Since we now operate in only one business, we no longer provide segment reporting.

The carrying amounts of the assets and liabilities of our discontinued operations are as follows:

<i>(in thousands)</i>	<b>July 3, 2010</b>	<b>January 2, 2010</b>
Cash and cash equivalents	\$ 2,268	\$ 5,456
Restricted cash	451	804
Accounts receivable, net of allowance for doubtful accounts of \$6 and \$205	924	5,563
Accounts receivable – related party	2,243	—
Deferred contract costs	1,568	1,632
Inventory, prepaid expenses and other assets	5,429	10,223
Property and equipment, net	4,106	—
Goodwill	37,253	—
Other intangible assets, net	12,074	—
Other assets	1,969	—
Current assets of discontinued operations	<u>68,285</u>	<u>23,678</u>
Property and equipment, net	—	3,516
Goodwill	—	38,899
Other intangible assets, net	—	14,604
Other assets	—	1,207
Other noncurrent assets of discontinued operations	—	58,226
Wireless spectrum licenses included in wireless spectrum licenses held for sale	12,131	14,934
Total assets of discontinued operations	<u>\$ 80,416</u>	<u>\$ 96,838</u>
Accounts payable	\$ 1,730	\$ 2,630
Accrued expenses	5,912	5,999
Deferred revenue	4,392	5,186
Deferred revenue – related party	7,942	6,797
Long-term obligations and other current liabilities	3,149	4,205
Deferred income tax liabilities	4,992	4,529
Other liabilities	—	1,025
Current liabilities of discontinued operations	<u>28,117</u>	<u>30,371</u>
Deferred income tax liabilities	—	743
Other liabilities	—	986
Other liabilities	—	1,729
Total liabilities of discontinued operations	<u>\$ 28,117</u>	<u>\$ 32,100</u>

The results of operations of our discontinued operations are as follows:

<i>(in thousands)</i>	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>July 3, 2010</b>	<b>June 27, 2009</b>	<b>July 3, 2010</b>	<b>June 27, 2009</b>
Revenues	\$ 8,843	\$ 13,934	\$ 20,524	\$ 32,082
Revenues – related party	2,268	—	9,337	—
<b>Total revenues</b>	<b>11,111</b>	<b>13,934</b>	<b>29,861</b>	<b>32,082</b>
Operating expenses:				
Cost of revenues	5,864	7,048	11,972	14,969
Cost of revenues – related party	227	—	530	—
Engineering, research and development	4,515	4,771	9,551	14,549
Sales and marketing	1,942	2,319	4,859	5,694
General and administrative	3,080	4,829	6,764	9,054
Asset impairment charges	297	1,500	2,013	11,369
Restructuring charges	97	290	958	4,941
<b>Total operating expenses</b>	<b>16,022</b>	<b>20,757</b>	<b>36,647</b>	<b>60,576</b>
<b>Net gains (losses) on business divestitures</b>	<b>(4,617)</b>	<b>(2)</b>	<b>(4,616)</b>	<b>51</b>
Loss from operations	(9,528)	(6,825)	(11,402)	(28,443)
Other income (expense), net	(39)	655	(18)	(258)
Loss before income taxes	(9,567)	(6,170)	(11,420)	(28,701)
Income tax benefit (provision)	(10)	(76)	(107)	(232)
<b>Net loss from discontinued operations</b>	<b>(9,577)</b>	<b>(6,246)</b>	<b>(11,527)</b>	<b>(28,933)</b>
<b>Net loss attributed to noncontrolling interest in subsidiary</b>	<b>1,671</b>	<b>—</b>	<b>1,237</b>	<b>—</b>
Net loss from discontinued operations attributed to NextWave	\$ (7,906)	\$ (6,246)	\$ (10,290)	\$ (28,933)

### ***Principles of Consolidation***

Our consolidated financial statements include the assets, liabilities and operating results of our wholly-owned subsidiaries as of July 3, 2010 and June 27, 2009, and for the three and six months then ended, respectively. Noncontrolling interest represents the noncontrolling shareholder's proportionate share of the net equity in our consolidated subsidiary, PacketVideo. All significant intercompany accounts and transactions have been eliminated in consolidation.

### ***Fiscal Year End***

We operate on a 52-53 week fiscal year ending on the Saturday nearest to December 31 of the current calendar year or the following calendar year. Normally, each fiscal year consists of 52 weeks, but every five or six years the fiscal year consists of 53 weeks. Fiscal year 2010 is a 52-week year ending on January 1, 2011 and fiscal year 2009 is a 53-week year ending on January 2, 2010. The three and six month periods ending on July 3, 2010 and June 27, 2009 include 13 and 26 weeks, respectively.

### ***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. On an ongoing basis, we evaluate our estimates, including those related to revenue recognition, income taxes and the valuation of marketable securities, share-based awards, goodwill, wireless spectrum licenses, intangible assets and other long-lived assets. Actual results could differ from those estimates.

### ***Revenues, Cost of Revenues and Deferred Contract Costs***

Our discontinued operations have derived revenues from the following sources:

- contracts to provide multimedia software products for mobile and home electronic devices and related royalties through

our PacketVideo subsidiary; and

- customer subscriptions for our WiMAX Telecom subsidiary.

For software arrangements, or in cases where the software is considered more than incidental and is essential to the functionality of the hardware or the infrastructure products, revenue is recognized pursuant to software revenue recognition and construction-type and production-type contracts accounting guidance.

For post launch hosting arrangements, revenue is recognized on a pro rata basis based on the term of the contract.

Our revenue arrangements can include multiple deliverables, software or technology license, non-recurring engineering services and post-contract customer support. For these arrangements, we consider the revenue recognition - multiple-element arrangements accounting guidance. Accordingly, we evaluate each deliverable in the arrangement to determine whether it represents a separate unit of accounting. If objective and reliable evidence of fair value exists (“vendor specific objective evidence”) for all units of accounting in the arrangement, revenue is allocated to each unit of accounting or element based on those relative fair values. If vendor specific objective evidence of fair value exists for all undelivered elements, but not for delivered elements, the residual method would be used to allocate the arrangement consideration. If elements cannot be treated as separate units of accounting because vendor specific objective evidence of the undelivered elements does not exist, they are combined into a single unit of accounting and the associated revenue is deferred until all combined elements have been delivered or until there is only one remaining element to be delivered. To date, we have not been able to establish vendor specific objective evidence for any of the elements included in our revenue arrangements, as the software and hardware products or services have not yet been sold separately, nor has a standard price list been established. As a result, once the software or technology is delivered and the only undelivered element is services, the entire non-contingent contract value is recognized ratably over the remaining service period. Costs directly attributable to providing these services are also deferred and amortized over the remaining service period of the respective revenues.

Services sold separately are generally billed on a time and materials basis at agreed-upon billing rates, and revenue is recognized as the services are performed.

We earn royalty revenues on licensed embedded multimedia products sold by our licensees. Generally, royalties are paid by licensees on a contingent, per unit, or fixed fee usage basis. The licensees generally report and pay the royalty in the quarter subsequent to the period of delivery or usage. We recognize royalty revenues based on royalties reported by licensees. When royalty arrangements also provide for ongoing post-contract customer support that does not meet the criteria to be recognized upon delivery of the software, the royalty is recognized ratably from the date the royalty report is received through the stated remaining term of the post-contract customer support. In limited situations, we have determined that post-contract customer support revenue can be recognized upon delivery of the software because the obligation to provide post-contract customer support is for one year or less, the estimated cost of providing the post-contract customer support during the arrangement is insignificant and unspecified upgrades or enhancements offered for the particular post-contract customer support arrangement historically have been and are expected to continue to be minimal and infrequently provided. In these instances, we have accrued all the estimated costs of providing the services upfront, which to date have been insignificant.

If we receive non-refundable advanced payments from licensees that are allocable to future contracts periods or could be creditable against other obligations of the licensee to us, the recognition of the related revenue is deferred until such future periods or until such creditable obligations lapse.

In instances where we have noted extended payment terms, revenue is recognized in the period the payment becomes due. If an arrangement includes specified upgrade rights, revenue is deferred until the specified upgrade has been delivered.

We do not generally allow for product returns and we have no history of significant product returns. Accordingly, no allowance for returns has been provided.

The timing and amount of revenue recognition depends upon a variety of factors, including the specific terms of each arrangement and the nature of our deliverables and obligations. Determination of the appropriate amount of revenue recognized involves judgments and estimates that our management believes are reasonable.

### ***Income Taxes***

We recognize income tax benefits (expense) based on estimates of our consolidated taxable income (loss) taking into account the various legal entities through which, and jurisdictions in which, we operate. As such, income tax benefits (expense) may vary from the customary relationship between income tax benefit (expense) and income (loss) before taxes.

## ***Recent Accounting Pronouncements***

In October 2009, the FASB issued an Accounting Standards Update (“ASU”) for revenue recognition related to multiple-deliverable revenue arrangements. This ASU provides amendments to the existing criteria for separating consideration in multiple-deliverable arrangements. The amendments establish a selling price hierarchy for determining the selling price of a deliverable, eliminate the residual method of allocation of arrangement consideration to all deliverables and require the use of the relative selling price method in allocation of arrangement consideration to all deliverables, require the determination of the best estimate of a selling price in a consistent manner, and significantly expand the disclosures related to the multiple-deliverable revenue arrangements. The amendments are effective for our fiscal year 2011 with early adoption permitted. We are currently evaluating the impact of adopting these amendments on our consolidated financial statements.

In October 2009, the FASB issued an ASU for software revenue recognition. This standard removes tangible products from the scope of software revenue recognition guidance and also provides guidance on determining whether software deliverables in an arrangement that includes a tangible product, such as embedded software, are within the scope of the software revenue guidance. This amendment is effective for our fiscal year 2011 with early adoption permitted. We are currently evaluating the impact of adopting this amendment on our consolidated financial statements.

## **2. Wireless Spectrum Licenses**

We continue to market for sale our wireless spectrum holdings. Any sale or transfer of the ownership of our wireless spectrum holdings is generally subject to regulatory approval. We are required to use the net proceeds from the sale of our wireless spectrum licenses to redeem our Senior Notes, Second Lien Notes and Third Lien Notes, subject to our right to retain up to \$12.5 million of such proceeds after payment of certain Senior Notes for general working capital purposes and permitted investments.

During the three and six months ended July 3, 2010, we recognized net gains (losses) on sales of our spectrum licenses of \$(0.2) million and \$12,000, respectively, after deducting incremental costs of \$0.5 million and \$0.7 million, respectively. The net gains (losses) recognized during the three and six months ended July 3, 2010, were partially reduced by lease payments received by us, pending completion of the sale of certain of our owned WCS spectrum licenses in the United States to a third party, of \$0.3 million and the forfeiture of a spectrum license sales deposit received by us of \$0.3 million. The net loss recognized during the three months ended July 3, 2010, includes incremental costs incurred on wireless spectrum sales anticipated to close during the third quarter of 2010.

During the three and six months ended June 27, 2009, we completed sales of certain of our owned Advanced Wireless Services (“AWS”) spectrum licenses in the United States to third parties for net proceeds, after deducting direct and incremental selling costs, of \$3.7 million and \$5.5 million, and recognized net gains on the sales of \$0.7 million and \$0.7 million, respectively. The net proceeds from the sales were used to redeem a portion of the Senior Notes at a redemption price of 105% of the principal amount thereof plus accrued interest.

We anticipate that certain of our remaining wireless spectrum licenses will be sold within the next twelve months. Accordingly, at July 3, 2010, we classified wireless spectrum holdings with a carrying value of \$59.0 million as assets held for sale, and, in accordance with accounting guidance for assets while held for sale, we are no longer amortizing these assets. As of July 3, 2010, the aggregate net carrying value of our remaining wireless spectrum license assets that are not considered held for sale was \$405.3 million, which includes \$79.1 million of asset value allocated as a result of related deferred tax liabilities determined in accordance with accounting guidance for acquired temporary differences in certain purchase transactions that are not accounted for as business combinations.

Through our continued efforts to sell our wireless spectrum licenses in Europe and Argentina during 2010, we determined that the carrying value of certain of these spectrum licenses exceeded their fair value based primarily on bids received and negotiations with third parties regarding the sale of these licenses, which led to our decision not to pursue build out obligations in Europe during this time period. Accordingly, during the six months ended July 3, 2010, we wrote-down the carrying value of our wireless spectrum licenses in Europe and Argentina to their estimated fair value and recognized asset impairment charges of \$0.2 million and \$0.3 million, respectively, all of which is reported in discontinued operations. Upon the sale and deconsolidation during the three months ended July 3, 2010, of our Slovakia based subsidiary, WiMax Telecom SRO, we reclassified \$1.2 million of the asset impairment

charge on our

wireless spectrum licenses in Slovakia that was recognized during the first quarter of 2010 against the net losses on business divestitures.

During the six months ended June 27, 2009, we determined that the carrying value of our remaining domestic AWS spectrum licenses and our wireless spectrum licenses in Europe exceeded their fair value based primarily on bids received and negotiations with third parties regarding the sale of these licenses which occurred in April 2009. Accordingly, during the six months ended June 27, 2009, we wrote-down the carrying value of our domestic AWS spectrum licenses and our wireless spectrum licenses in Europe to their estimated fair value and recognized asset impairment charges of \$16.2 million, of which \$9.4 million is reported in continuing operations and \$6.8 million is reported in discontinued operations.

### 3. Asset Impairment Charges

#### *Long-Lived Assets*

In connection with our ongoing discussions to sell our Nevada office building, we determined that indicators of impairment were present, and, accordingly, based on the accounting guidance for the impairment or disposal of long-lived assets, we performed an assessment to determine if the carrying value of our building was recoverable through estimated undiscounted future cash flows resulting from the use of the assets and their eventual disposition. During the three and six months ended July 3, 2010, we recognized additional asset impairment charges of \$1.5 million, all of which is reported as asset impairment charges in discontinued operations.

In connection with our global restructuring initiative, we reviewed our long-lived assets for impairment and, during the six months ended June 27, 2009, determined that indicators of impairment were present for certain long-lived assets. Accordingly, we performed an assessment to determine if the carrying value of these long-lived assets was recoverable through estimated undiscounted future cash flows resulting from the use of the assets and their eventual disposition. As a result of this assessment, during the three and six months ended June 27, 2009, we recognized additional asset impairment charges of \$1.6 million and \$4.8 million, of which \$1.5 million and \$4.6 million is reported as asset impairment charges in discontinued operations and \$0.1 million and \$0.2 million is reported as asset impairment charges in continuing operations, respectively.

There are inherent estimates and assumptions underlying the projected cash flows utilized in the recoverability assessment and management's judgment is required in the application of this information to the determination of the recovery value of the assets. No assurance can be given that the underlying estimates and assumptions will materialize as anticipated.

### 4. Restructuring Charges

The following summarizes the restructuring activity for the six months ended July 3, 2010 and June 27, 2009 and the related restructuring liabilities:

<i>(in thousands)</i>	<b>Balance at Beginning of Year</b>	<b>Charges to Expense</b>	<b>Cash Payments</b>	<b>Reversal of Deferred Charges</b>	<b>Balance at End of Period</b>
<b>For the Six Months Ended July 3, 2010</b>					
Lease abandonment and facility closure costs	\$ 1,750	\$ 108	\$ —	\$ —	\$ 1,858
Other related costs, including contract termination costs, selling costs and legal fees	349	1,087	(1,163)	—	273
Total	<u>\$ 2,099</u>	<u>\$ 1,195</u>	<u>\$ (1,163)</u>	<u>\$ —</u>	<u>\$ 2,131</u>
Continuing operations <sup>(1)</sup>	\$ 1,833	\$ 237			\$ 1,697
Discontinued operations	266	958			434
Total	<u>\$ 2,099</u>	<u>\$ 1,195</u>			<u>\$ 2,131</u>
<b>For the Six Months Ended June 27, 2009</b>					
Employee termination costs	\$ 237	\$ 4,884	\$ (5,085)	\$ —	\$ 36
Lease abandonment and facility closure costs	1,616	282	(1,173)	1,136	1,861
Other related costs, including contract termination costs, selling costs and legal fees	2,668	1,813	(2,286)	—	2,195

Total	\$	<u>4,521</u>	\$	<u>6,979</u>	\$	<u>(8,544)</u>	\$	<u>1,136</u>	\$	<u>4,092</u>
Continuing operations <sup>(2)</sup>	\$	<u>3,492</u>	\$	<u>2,038</u>					\$	<u>3,789</u>
Discontinued operations		<u>1,029</u>		<u>4,941</u>						<u>303</u>
Total	\$	<u>4,521</u>	\$	<u>6,979</u>					\$	<u>4,092</u>

- (1) Included in restructuring charges of continuing operations for the six months ended July 2, 2010 is \$0.2 million of interest accretion expense on long-term obligations resulting from the renegotiation of one of our abandoned lease liabilities, which is reported in interest expense of continuing operations in the consolidated statement of operations.
- (2) Included in the restructuring charges of continuing operations for the three and six months June 27, 2009 is a credit of \$1.0 million and net charges of \$0.4 million of lease abandonment and facility closure costs related to certain shared facilities. The credit during the three months ended June 27, 2009 resulted from a reduction in our lease obligation pursuant to a sublease termination agreement that was consummated in June 2009. Also included in the restructuring charges of continuing operations for the three and six months ended June 27, 2009 are costs related to the divestiture and closure of discontinued businesses totaling \$0.2 million and \$1.3 million, respectively.

## 5. Long-Term Obligations

Long-term obligations held by continuing operations consist of the following:

<i>(dollars in thousands)</i>	<b>July 3, 2010</b>	<b>January 2, 2010</b>
15% Senior Secured Notes due July 2011, net of unamortized discounts of \$6,917 and \$6,177 at July 3, 2010 and January 2, 2010, respectively, and stated interest rates of 15% and 14% for payment-in-kind interest at July 3, 2010 and January 2, 2010, respectively, and 9% for cash interest at January 2, 2010	\$ 203,430	\$ 162,076
15% Senior-Subordinated Secured Second Lien Notes due November 2011, net of unamortized discounts of \$12,038 and \$13,182 at July 3, 2010 and January 2, 2010, respectively, and stated interest rates of 15% and 14% at July 3, 2010 and January 2, 2010, respectively	143,012	127,573
12% Third Lien Subordinated Secured Convertible Notes due December 2011, net of unamortized discounts of \$144,670 and \$134,230 at July 3, 2010 and January 2, 2010, respectively and stated interest rates of 12% and 7.5% at July 3, 2010 and January 2, 2010, respectively	420,250	389,869
Wireless spectrum leases, net of unamortized discounts of \$15,386 and \$16,556 at July 3, 2010 and January 2, 2010, respectively; expiring from 2011 through 2036 with one to five renewal options ranging from 10 to 15 years each	23,093	25,768
Collateralized non-recourse bank loan with interest at 30-day LIBOR plus 0.25%; principal and interest due upon sale of auction rate securities; secured by auction rate securities	—	21,406
Other	1,631	1,412
Long-term obligations	791,416	728,104
Less current portion	(62,134)	(86,154)
Long-term portion	<u>\$ 729,282</u>	<u>\$ 641,950</u>

Effective as of March 16, 2010, we entered into the Amendment and Waiver (Note 1) to the agreements governing our Senior Notes, Second Lien Notes and Third Lien Notes. Pursuant to the Amendment and Waiver, the maturity date of our Senior Notes was extended from July 17, 2010 to July 17, 2011, with an additional extension to October 17, 2011 if certain conditions are met, including the pendency of asset sales that would yield net proceeds sufficient to repay all then-outstanding Senior Notes. In addition, the maturity date of our Second Lien Notes was extended from December 31, 2010 to November 30, 2011. As a result of the Amendment and Waiver, the interest payable on our Senior Notes and Second Lien Notes was increased to a rate of 15% per annum beginning March 16, 2010 and the interest payable on our Third Lien Notes was increased to a rate of 12% per annum beginning March 16,

2010, increasing 1% per annum on each of December 31, 2010, March 30, 2011, June 30, 2011 and September 30, 2011 to a maximum of 16%. After giving effect to the Amendment and Waiver, all Notes will receive only payment-in-kind interest for the full term of such Notes, unless we elect to pay cash interest, and the redemption premium on the Notes was eliminated. As a result of the Amendment and Waiver, we classified \$59.0 million of the long term obligations as current obligations based on our estimated repayment obligation upon the sale of our Held For Sale assets as required by the Senior Notes, Second Lien Notes, and Third Lien Notes. The Amendment and Waiver reduced the requirement to maintain a minimum cash balance from \$5.0 million to \$1.0 million and, after payment in full of certain designated Senior Notes (the "Priority Notes") with an aggregate principal amount of \$56.5 million at July 3, 2010 and the Senior Incremental Notes (as defined below) with an aggregate principal amount of \$25.5 million at July 3, 2010, permits us to retain up to \$12.5 million of asset sale proceeds for general working capital purposes and permitted investments. The Amendment and Waiver also eliminates the redemption premium on all Notes. As consideration for the Amendment and Waiver, we paid an amendment fee to each Holder through the issuance of additional Notes (the "Fee Notes") under the applicable Note Agreements in an amount equal to 2.5% of the outstanding principal and accrued and unpaid interest on such Holder's existing Notes as of March 16, 2010. The Fee Notes were paid on March 16, 2010 through the issuance of \$4.3 million in Senior Notes, \$3.6 million in Second Lien Notes and \$13.3 million in Third Lien Notes.

As permitted by the Amendment and Waiver, we issued \$20.0 million and \$5.0 million in additional Senior Notes (the "Senior Incremental Notes") during the second quarter of 2010 to Avenue Capital Management II, L.P., acting on behalf of its managed investment funds signatory thereto, and Solus Core Opportunities Master Fund Ltd and its affiliates and co-investors, respectively. As with the other Senior Notes, amounts outstanding under the Senior Incremental Notes bear interest at a rate of 15% per annum, payable in-kind unless we elect to pay cash, and are secured by a first lien on the same assets securing our Senior Notes, on a pari passu basis. No commitment fee or structuring fee was payable in connection with the issuance of the Senior Incremental Notes.

We determined that the Senior Note and Second Lien Note debt instruments prior to and after the March 16, 2010 Amendment and Waiver are not substantially different and, therefore, do not receive debt extinguishment accounting treatment in accordance with generally accepted accounting principles. Under modification accounting, new effective interest rates are determined as of the modification date based on the carrying amount of the original debt instrument and the revised cash flows. The Fee Notes and the fair value of any new embedded derivatives are considered to be associated with the modified debt instruments and, along with existing unamortized discounts, are amortized as an adjustment to interest expense over the remaining term of the modified debt instruments using the effective interest method.

The automatic extension of the maturity date of our Senior Notes from July 17, 2011 to October 17, 2011 if certain conditions are met, including the pendency of asset sales that would yield net proceeds sufficient to repay all then-outstanding Senior Notes, constitutes an embedded derivative. Accordingly, we have bifurcated the estimated fair value of the embedded derivative from the carrying value of the Senior Notes upon modification and recognized subsequent changes in the fair value of the embedded derivative against income. We measured the estimated fair value of the Senior Notes embedded derivative using a probability-weighted discounted cash flow model, which includes management assumptions of the probability of occurrence of certain conditions, including the pendency of asset sales that would yield net proceeds sufficient to repay all then-outstanding Senior Notes. The initial estimated fair value of the Senior Notes embedded derivative at March 16, 2010 of \$0.2 million was recorded as a decrease in the carrying value of the Senior Notes and the estimated fair value of the embedded derivative of \$0.1 million at July 3, 2010 is reported in other long-term liabilities in the accompanying consolidated balance sheets. The changes in the estimated fair value of the embedded derivative of \$0.1 million and \$(0.1) million during the three and six months ended July 3, 2010, were recognized as credits (charges) to other income (expense) in the accompanying consolidated statements of operations.

The requirements to redeem the Second Lien Notes upon an asset sale and a change in control constitute embedded derivatives. Accordingly, we have bifurcated the estimated fair value of each embedded derivative from the carrying value of the Second Lien Notes and recognized subsequent changes in the fair value of the embedded derivatives against income. We measured the estimated fair value of the Second Lien Notes embedded derivatives using a probability-weighted discounted cash flow model, which

includes management assumptions of the probability of occurrence of a redemption of the Second Lien Notes upon an asset sale and a change in control. The estimated fair value of the Second Lien Notes embedded derivatives of \$0.1 million and \$9.9 million at July 3, 2010 and January 2, 2010, respectively, are reported in other long-term liabilities in the accompanying consolidated balance sheets. Changes in the estimated fair value of the embedded derivatives of \$0.1 million and \$9.8 million during the three and six months ended July 3, 2010, respectively, were recognized as credits to other income (expense) in the accompanying consolidated statements of operations. The reduction in the fair value of the embedded derivative liabilities and the \$9.8 million credit to other income (expense) during the six months ended July 3, 2010 resulted primarily from the Amendment and Waiver which eliminated the redemption premiums required upon an asset sale or change in control.

The Amendment and Waiver to our Third Lien Notes, which increased the interest rate payable on our Third Lien Notes, was determined to have been accomplished with debt instruments that are substantially different, in accordance with generally accepted accounting principles, resulting in an effective extinguishment of the existing Third Lien Notes and a new issue of Third Lien Notes as of the modification date for accounting purposes. The new issue of Third Lien Notes was recorded at its estimated fair value using a discount rate of 40%, which represents the estimated incremental borrowing rate of our Third Lien Notes that was determined by a third party valuation group, and that amount was used to determine a net debt extinguishment gain of \$38.0 million that was recognized during the six months ended July 3, 2010 in other income in the accompanying consolidated statements of operations. The net gain of \$38.0 million was determined as the difference between the remaining unamortized discount under the extinguished Third Lien Notes of \$123.1 million and the new discount of \$164.8 million, plus \$9.6 million of embedded derivative liabilities that were eliminated at the date of the extinguishment, partially offset by \$13.3 million in fee notes issued to the Third Lien noteholders. The new discount of \$164.8 million is amortized using the effective interest rate method over the remaining term of the Third Lien Notes due December 2011 which will significantly increase our interest expense for financial reporting purposes.

The requirements to redeem the Third Lien Notes upon an asset sale and a change in control constitute embedded derivatives. Accordingly, we have bifurcated the estimated fair value of each embedded derivative from the fair value of the Third Lien Notes upon the effective reissuance of the Third Lien Notes at March 16, 2010, and recognized subsequent changes in the fair value of the embedded derivatives against income. We measured the estimated fair value of the Third Lien Notes embedded derivatives using a probability-weighted discounted cash flow model, which includes management assumptions of the probability of occurrence of a redemption of the Third Lien Notes upon an asset sale and a change in control. The initial estimated fair value of the Third Lien Notes embedded derivatives of \$3.7 million was recorded as a reduction in the carrying value of the Third Lien Notes and the estimated fair values of the embedded derivatives of \$5.5 million at July 3, 2010, are reported in other long-term liabilities in the accompanying consolidated balance sheets. Changes in the estimated fair value of the embedded derivatives of \$(1.7) million and \$4.1 million during the three and six months ended July 3, 2010, respectively, were recognized as credits (charges) to other income (expense) in the accompanying consolidated statements of operations.

During the three months ended July 3, 2010, we exercised our auction rate securities rights and sold our auction rate securities to UBS for \$25.0 million and paid in full our collateralized non-recourse bank loan that was secured by our auction rate securities.

## **6. Related Party Transactions**

### ***Debt-Related Transactions***

As permitted by the March 16, 2010 Amendment and Waiver, we issued \$25.0 million in Senior Incremental Notes during the three months ended July 3, 2010 to Avenue Capital Management II, L.P., acting on behalf of its managed investment funds signatory thereto, and Solus Core Opportunities Master Fund Ltd and its affiliates and co-investors. Avenue Capital Management II, L.P., is an affiliate of Avenue Capital. Robert Symington, a portfolio manager with Avenue Capital, is a member of our Board of Directors. As of July 3, 2010, Avenue Capital and its affiliates beneficially owned shares representing 28.5% of our

issued and outstanding common stock, \$116.8 million, or 56% of the aggregate principal amount of our Senior Notes, \$120.7 million, or 78% of the aggregate principal amount of our Second Lien Notes and \$159.1 million, or 28% of the aggregate principal amount of our Third Lien Notes. As of July 3, 2010, Solus beneficially owned shares representing 10.0% of our issued and outstanding common stock, \$37.0 million, or 18% of the aggregate principal amount of our Senior Lien Notes, \$34.3 million, or 22% of the aggregate principal amount of our Second Lien Notes and \$65.2 million, or 12% of the aggregate principal amount of our Third Lien Notes. As with the other Senior Notes, amounts outstanding under the Senior Incremental Notes bear interest at a rate of 15% per annum, payable in-kind unless we elect to pay cash, and will be secured by a first lien on the same assets securing our Senior Notes, on a pari passu basis. No commitment fee or structuring fee is payable in connection with the issuance of the Senior Incremental Notes. During the three months ended July 3, 2010, we received cash of \$20.0 million and \$5.0 million and issued Senior Incremental Notes in the same principal amount to Avenue Capital and Solus, respectively.

As consideration for the Amendment and Waiver, we paid an amendment fee to each of Avenue, Solus, Douglas F. Manchester, a member of our Board of Directors and Navation, Inc. (“Navation”), an entity owned by Allen Salmasi, our Chairman, through the issuance of additional Notes under the applicable Note Agreements in an amount equal to 2.5% of the outstanding principal and accrued and unpaid interest on such holder’s existing Notes as of March 16, 2010. The Fee Notes were paid on March 16, 2010 by the issuance of Senior Notes, Second Lien Notes and Third Lien Notes to Avenue Capital, Solus, Mr. Manchester and Navation, and will accrue interest and become payable in accordance with the terms of the respective Note Agreements. Avenue Capital received \$2.3 million in Senior Notes, \$2.8 million in Second Lien Notes and \$3.7 million in Third Lien Notes. Solus received \$0.7 million in Senior Notes, \$0.8 million in Second Lien Notes and \$1.5 million in Third Lien Notes. Mr. Manchester and Navation each received \$1.9 million in Third Lien Notes. The transactions contemplated by the Amendment and Waiver, including the issuance of the Senior Incremental Notes, were approved and recommended to our Board of Directors by an independent committee consisting of members of the Board of Directors who do not have any direct or indirect economic interest in the Notes.

#### ***Business Divestiture and Revenue Transactions***

In June 2010, we sold the capital stock of our WiMAX Telecom Slovakia s.r.o (“WT SRO”) subsidiary to flyhigh Partners s. r. o. (“flyhigh”), a private limited liability company of which the controlling shareholder is the former managing director and statutory representative of WT SRO, for \$0.1 million and recognized a \$8.8 million net loss from business divestitures. Upon closing of the sale, we have no remaining obligations to provide financing to support the ongoing operations of WT SRO. Also, in connection with the sale, we entered into an additional consideration agreement with flyhigh that provides for payment to us upon the occurrence of specified trigger events, which includes the sale, lease or contribution or other transfer of all or part of the assets or capital stock of WT SRO, including a spectrum license to third parties, other than the sale or lease of spectrum assignments of less than 10% to the MHz-pop of WT SRO in the aggregate, or a sale or other transfer of WT SRO share capital to any third party or sale or other transfer of share capital above 34% in flyhigh to any third party.

In June 2010, we sold the capital stock of our two Chilean subsidiaries, Southam Chile SA and Sociedad Televisora CBC Ltd, to VTR GlobalCom S.A. and VTR Ingenieria S.A., the holders of our notes payable secured by the Chilean spectrum, for net proceeds of \$0.7 million, after deducting direct and incremental costs of \$0.5 million, and the assumption of the notes payable aggregating \$4.3 million. We recognized a net gain on business divestitures of \$4.2 million due to the assumption of our notes payable.

DOCOMO, a customer of PacketVideo, hold a 35% ownership interest in our PacketVideo subsidiary. On July 30, 2010 we signed a stock purchase agreement to sell our remaining 65% ownership interest in PacketVideo to DOCOMO (see Note 12). PacketVideo sells a version of its multimedia player to DOCOMO for installation into DOCOMO handset models. PacketVideo recognized \$2.3 million and \$9.3 million in related party revenues and \$0.2 million and \$0.5 million in cost of revenues, during the three and six months ended July 3, 2010, respectively, from DOCOMO in the consolidated statements of operations for our discontinued operations.

## 7. Comprehensive Loss

Comprehensive loss and comprehensive loss attributable to the noncontrolling interest in subsidiary and NextWave are as follows:

	Three Months Ended		Six Months Ended	
	July 3, 2010	June 27, 2009	July 3, 2010	June 27, 2009
<i>(in thousands)</i>				
Net loss	\$ (72,853)	\$ (55,487)	\$ (75,769)	\$ (137,666)
Foreign currency translation adjustment	2,714	4,772	2,421	879
Total comprehensive loss	(70,139)	(50,715)	(73,348)	(136,787)
Comprehensive loss attributable to noncontrolling interest in subsidiary	2,213	—	2,202	—
Comprehensive loss attributable to NextWave	<u>\$ (67,926)</u>	<u>\$ (50,715)</u>	<u>\$ (71,146)</u>	<u>\$ (136,787)</u>

## 8. Net Loss Per Common Share Information

Basic and diluted net loss per common share for the three and six months ended July 3, 2010 and June 27, 2009 is computed by dividing net loss applicable to common shares by the weighted average number of common shares outstanding during the respective periods, without consideration of common stock equivalents. Our weighted average number of common shares outstanding includes the weighted average number of 1.8 million for warrants exercisable for shares of our common stock that were outstanding during the three and six months ended July 3, 2010, and 7.2 million and 6.6 million during the three and six months ended June 27, 2009, respectively, as they are issuable for an exercise price of \$0.07 each. At July 3, 2010, 1.8 million of these warrants remained outstanding.

The following securities that could potentially dilute earnings per share in the future are not included in the determination of diluted loss per share as they are antidilutive. The share amounts are determined using a weighted average of the common stock equivalents outstanding during the respective periods.

	Three Months Ended		Six Months Ended	
	July 3, 2010	June 27, 2009	July 3, 2010	June 27, 2009
<i>(in thousands)</i>				
Third Lien Notes	7,100	6,404	6,940	6,345
Outstanding stock options	2,829	2,125	2,897	2,204

## 9. Stockholders' Deficit

Changes in shares of common stock, stockholders' deficit attributable to NextWave, the noncontrolling interest in subsidiary and total stockholders' deficit for the six months ended July 3, 2010 are as follows:

	Shares of Common Stock	Stockholders'	Noncontrolling	Total Stockholders'
		Deficit Attributable to NextWave	Interest in Subsidiary	
<i>(in thousands)</i>				
Balance at January 2, 2010	22,434	\$ (291,605)	\$ 15,948	\$ (275,657)
Shares issued for stock options exercised	60	141	—	141
Share-based compensation expense	—	2,059	763	2,822
Foreign currency translation adjustment	—	3,386	(965)	2,421
Net loss	—	(74,532)	(1,237)	(75,769)
Balance at July 3, 2010	<u>22,494</u>	<u>\$ (360,551)</u>	<u>\$ 14,509</u>	<u>\$ (346,042)</u>

## 10. Fair Value Measurements

### *Assets and Liabilities Measured at Fair Value on a Recurring Basis*

The following table summarizes our assets and liabilities that require fair value measurements on a recurring basis and their respective input levels based on the fair value hierarchy contained in fair value measurements and disclosures accounting guidance:

(in thousands)	Fair Value	Fair Value Measurements at End of Period Using:		
		Quoted Market Prices for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>At July 3, 2010</b>				
Cash and cash equivalents	\$ 33,844	\$ 33,844	\$ —	\$ —
Embedded derivatives <sup>(1)</sup>	5,706	—	—	5,706
<b>At January 2, 2010</b>				
Cash and cash equivalents	\$ 20,512	\$ 20,512	\$ —	\$ —
Auction rate securities <sup>(2)</sup>	24,023	—	—	24,023
Auction rate securities rights <sup>(3)</sup>	1,227	—	—	1,227
Embedded derivatives <sup>(1)</sup>	19,504	—	—	19,504

- (1) Included in other current and other long-term liabilities in the accompanying consolidated balance sheet  
(2) Included in restricted cash and marketable securities in the accompanying consolidated balance sheet.  
(3) Included in other noncurrent assets in the accompanying consolidated balance sheet.

**Embedded Derivatives.** The automatic extension of the maturity date of our Senior Notes from July 17, 2011 to October 17, 2011 if certain conditions are met, including the pendency of asset sales that would yield net proceeds sufficient to repay all then-outstanding Senior Notes, and our obligation to redeem the Second Lien Notes and Third Lien Notes upon an asset sale and a change in control constitute embedded derivatives under derivatives and hedging accounting guidance. Accordingly, we have bifurcated the estimated fair value of each embedded derivative from the carrying values of the Senior Notes, Second Lien Notes and Third Lien Notes and recognized subsequent changes in the fair value of the embedded derivatives in the income statement. We measured the estimated fair value of the Senior Notes, Second Lien Notes and Third Lien Notes embedded derivatives using probability-weighted discounted cash flow models (Level 3 inputs). The discounted cash flow models utilize management assumptions of the probability of occurrence of an additional extension of the maturity date of our Senior Notes and a redemption of the Second Lien Notes and Third Lien Notes upon an asset sale and a change in control.

**Auction Rate Securities.** At January 2, 2010, we estimated the fair value of our auction rate securities, which were classified as trading securities under debt and equity securities accounting guidance, using a discounted cash flow model (Level 3 inputs), which measures fair value based on the present value of projected cash flows over a specific period. The values are then discounted to reflect the degree of risk inherent in the security and achieving the projected cash flows. The discounted cash flow model used to determine the fair value of the auction rate securities at January 2, 2010 utilized a discount rates of 2.5% which represent estimated market rates of return, and estimated periods until sale and/or successful auction of the security of one year. The determination of the fair value of our auction rate securities also considered, among other things, the collateralization underlying the individual securities and the creditworthiness of the counterparty. During the three months ended July 3, 2010, we exercised our auction rate securities rights and sold our auction rate securities to UBS for \$24.0 million and paid in full our collateralized non-recourse bank loan that was secured by our auction rate securities.

**Auction Rate Securities Rights.** Our auction rate securities rights allowed us to sell our auction rate securities at par value to UBS at any time during the period of June 30, 2010 through July 2, 2012, and during the three months ended July 2, 2010, we exercised these rights and sold our auction rate securities to UBS. We elected to measure the fair value of the auction rate securities rights under financial instruments accounting guidance, which we believe will mitigated volatility in our reported earnings due to the inverse relationship between the fair value of the auction rate securities rights and the underlying auction rate securities. At January 2, 2010, we estimated the fair value of our auction rate securities rights using a discounted cash flow model, similar to the auction rate securities (Level 3 inputs). The discounted cash flow model at January 2, 2010 utilized a discount rate of 1.0% and an estimated period until recovery of less than one year.

The following table summarizes the activity in assets (liabilities) measured at fair value on a recurring basis using significant unobservable inputs (Level 3 Inputs – see chart below):



(in thousands)	Embedded Derivatives					
	Auction Rate Securities	Auction Rate Securities Rights	Senior Notes	Second Lien Notes	Third Lien Notes	Total
Balance at January 2, 2010	\$ 24,023	\$ 1,227	\$ —	\$ (9,928)	\$ (9,576)	\$ 5,746
Purchases, issuances, sales, exchanges, settlements and debt modifications	(24,023)	(1,227)	(182)	(41)	5,929	(19,544)
Realized gains included in other income (expense), net	—	—	—	9,554	—	9,554
Unrealized gains (losses) included in other income (expense), net	—	—	65	288	(1,815)	(1,462)
Balance at July 3, 2010	\$ —	\$ —	\$ (117)	\$ (127)	\$ (5,462)	\$ 5,706

### Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

The following table summarizes our assets and liabilities that were measured at fair value on a nonrecurring basis during the period and their respective input levels based on the fair value hierarchy contained in fair value measurements and disclosures accounting guidance:

(in thousands)	Net Carrying Value at End of Period	Fair Value Measurements Using:			Fair Value Measurements Recorded During the:	
		Quoted Market Prices for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Three Months Ended	Six Months Ended
<b>July 3, 2010</b>						
Wireless spectrum licenses held for sale <sup>(1)</sup>	\$ 59,048	\$ —	\$ 59,048	\$ —	\$ (1,177)	\$ 538
Property and equipment, net <sup>(2)</sup>	11,427	—	—	11,427	1,500	1,500
<b>June 27, 2009</b>						
Wireless spectrum licenses held for sale	\$ 113,063	\$ —	\$ 113,063	\$ —	\$ —	\$ 16,171
Property and equipment, net <sup>(3)</sup>	17,693	—	—	17,693	1,583	4,257

- (1) Upon the sale and deconsolidation during the three months ended July 3, 2010, of our Slovakia based subsidiary, WiMax Telecom SRO, we reclassified \$1.2 million of the asset impairment charge on our wireless spectrum licenses in Slovakia that was recognized during the first quarter of 2010 against the net losses on business divestitures in discontinued operations.
- (2) Includes property and equipment of continuing operations of \$3.8 million, property and equipment of discontinued operations of \$4.1 million and property and equipment held for sale by discontinued operations of \$3.5 million
- (3) Includes property and equipment of continuing operations of \$0.7 million, property and equipment of discontinued operations of \$12.0 million and property and equipment held for sale by discontinued operations of \$5.0 million.

Wireless Spectrum Licenses. Through our continued efforts to sell our remaining domestic AWS spectrum licenses and our wireless spectrum licenses in Europe and Argentina, we determined that the carrying value of these spectrum licenses exceeded their fair value based primarily on bids received and negotiations with third parties regarding the sale of these licenses. We estimated the fair value of these wireless spectrum licenses based on advanced negotiations and submitted bids from third parties for the purchase of the licenses (Level 2 Inputs). Accordingly, during the three and six months ended July 3, 2010, we wrote-down the carrying value of our wireless spectrum licenses in Europe and Argentina to their estimated fair value and recognized asset impairment charges of \$0.2 million and \$0.3 million, respectively, all of which is reported in discontinued operations. During the six months ended June 27, 2009, we wrote-down the carrying value of our domestic AWS spectrum licenses and our wireless spectrum licenses in Europe and Argentina to their estimated fair value and recognized asset impairment charges of \$16.2 million, of which \$9.4 million is reported in continuing operations and \$6.8 million is reported in discontinued operations.

Property and Equipment, Net. In connection with our ongoing discussions to sell our Nevada office building, we

determined that indicators of impairment were present, and, accordingly, based on the

accounting guidance for the impairment or disposal of long-lived assets, we performed an assessment to determine if the carrying value of our building was recoverable through estimated undiscounted future cash flows resulting from the use of the assets and their eventual disposition. During the three and six months ended July 3, 2010, we recognized additional asset impairment charges of \$1.5 million, all of which is reported as asset impairment charges in discontinued operations. In connection with our global restructuring initiative, we continued to review our long-lived assets for impairment and, during the six months ended June 27, 2009, determined that indicators of impairment were present for the long-lived assets in our semiconductor segment as well as certain other long-lived assets. Accordingly, we performed an assessment to determine if the carrying value of these long-lived assets was recoverable through estimated undiscounted future cash flows resulting from the use of the assets and their eventual disposition (Level 3 inputs). Based on the impairment assessment performed, we determined that the carrying value of our property and equipment exceeded its estimated fair value and, accordingly, we recognized asset impairment charges of \$1.6 million and \$4.3 million during the three and six months ended June 27, 2009, of which \$1.5 million and \$4.1 million is reported as asset impairment charges in discontinued operations and \$0.1 million and \$0.2 million is reported as asset impairment charges in continuing operations, respectively.

### ***Fair Value of Other Financial Instruments***

The carrying amounts of certain of our financial instruments of continuing operations, including cash and cash equivalents, accounts receivable, accounts payable, accrued expenses and note payable to bank, approximate fair value due to their short-term nature. The carrying amounts and fair values of our long-term obligations of continuing operations are as follows:

<i>(in thousands)</i>	<u>July 3, 2010</u>		<u>January 2, 2010</u>	
	<u>Carrying Amount</u>	<u>Fair Value</u>	<u>Carrying Amount</u>	<u>Fair Value</u>
Senior Notes	\$ 203,430	\$ 201,000	\$ 162,076	\$ 156,438
Second Lien Notes	143,012	142,176	127,573	122,070
Third Lien Notes	420,250	420,251	389,869	347,189
Wireless spectrum leases	23,093	9,497	25,768	13,345

At July 3, 2010, we determined the fair value of our Senior Notes, Second Lien Notes and leased wireless spectrum licenses using discounted cash flow models with discount rates of 15%, 23% and 40%, respectively, which represents our respective estimated incremental borrowing rates as of that date for that type of instrument. At July 3, 2010, our Third Lien Notes were measured using their fair value upon reissuance for accounting purposes in March 2010. At January 2, 2010, we determined the fair value of our Notes and wireless spectrum licenses using a discounted cash flow model with a discount rate of 32.5%, which represents our estimated incremental borrowing rate as of that date.

## **11. Commitments and Contingencies**

### ***Legal Proceedings***

On September 16, 2008, a putative class action lawsuit, captioned “Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants,” was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys’ fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned “Benjamin et al. v. NextWave Wireless Inc. et al.” was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint. On April 30, 2010, NextWave filed a Motion to Dismiss the Second Amended Complaint and the Motion now

has been fully briefed and is under submission to the court. At this time, there can be no assurance as to the ultimate outcome of this litigation.

We are also currently involved in other legal proceedings in the ordinary course of our business operations. We estimate the range of liability related to pending litigation where the amount and range of loss can be estimated. We record our best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, we record the minimum estimated liability related to the claim. As additional information becomes available, we assess the potential liability related to our pending litigation and revise our estimates. As of July 3, 2010, other than the matters described above, we have not recorded any significant accruals for contingent liabilities associated with our legal proceedings based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time. Revisions to our estimate of the potential liability could materially impact future results of operations.

### ***Indemnifications***

We provide indemnifications of varying scope and size to certain customers against claims of intellectual property infringement made by third parties arising from the use of our products. We have also entered into indemnification agreements with our officers and directors. Although the maximum potential amount of future payments we could be required to make under these indemnifications is unlimited, to date we have not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. Additionally, we have insurance policies that, in most cases, would limit our exposure and enable us to recover a portion of any amounts paid. Therefore, we believe the estimated fair value of these agreements is minimal and likelihood of incurring an obligation is remote. Accordingly, we have not accrued any liabilities in connection with these indemnification obligations as of July 3, 2010.

## **12. Subsequent Event**

On July 30, 2010, we signed a definitive agreement for the sale of our remaining 65% stock ownership in our PacketVideo subsidiary to DOCOMO and continued to pursue wireless spectrum license sales, the net proceeds of which we will retain \$12.5 million for general working capital purposes and permitted investments and the remainder of which will be used to reduce our outstanding indebtedness, thereby reducing interest accruals payable in future years. In July 2009, DOCOMO acquired a 35% ownership interest in PacketVideo.

Upon completion of the Transaction, which is expected during our third quarter of 2010, PacketVideo will become a wholly owned subsidiary of DOCOMO. The Transaction remains subject to customary closing conditions, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act, and approval by NextWave stockholders. The Stock Purchase Agreement also includes provisions enabling us and/or DOCOMO to terminate the Stock Purchase Agreement in certain specified circumstances. Following a termination of the Stock Purchase Agreement, we may be required to reimburse up to \$0.7 million of the aggregate expenses of DOCOMO under specified circumstances.

The Transaction likely will not result in any material United States federal or California state corporate income tax liability (including any alternative minimum tax liability) because we anticipate using our net operating losses to offset any taxable gain generated.

In connection with the signing of the Stock Purchase Agreement, Dr. James C. Brailean resigned from his position as the Chief Executive Officer, Chief Operating Officer and President of NextWave and as a member of NextWave's Board of Directors. Dr. Brailean continues to serve as the President and Chief Executive Officer and as a member of the Board of Directors of PacketVideo.

## ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operation

*In addition to historical information, the following discussion contains forward-looking statements that are subject to risks and uncertainties. Actual results may differ substantially from those referred to herein due to a number of factors, including but not limited to risks described in the section entitled Risk Factors and elsewhere in this Quarterly Report. Additionally, the following discussion and analysis should be read in conjunction with the consolidated financial statements and the notes thereto included in Item 1 of Part I of this Quarterly Report and the audited consolidated financial statements and notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations for the year ended January 2, 2010 contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 2, 2010.*

*We operate on a 52-53 week fiscal year ending on the Saturday nearest to December 31 of the current calendar year or the following calendar year. Normally, each fiscal year consists of 52 weeks, but every five or six years the fiscal year consists of 53 weeks. Fiscal year 2010 is a 52-week year ending on January 1, 2011 and fiscal year 2009 was a 53-week year ending January 2, 2010. The three and six month periods ending on July 3, 2010 and June 27, 2009 include 13 and 26 weeks, respectively.*

### OVERVIEW

#### Second Quarter Highlights

- Our net loss from continuing operations during the second quarter of 2010 was \$63.3 million compared to \$49.2 million for the second quarter of 2009.
- Our net loss from continuing operations during the first six months of 2010 was \$64.2 million, and prior to the gain on extinguishment of debt of \$38.0 million, was \$102.2 million, compared to \$108.7 million for the first six months of 2009.
- As permitted by the Amendment and Limited Waiver (the "Amendment and Waiver") to the agreements governing our Senior Notes, Second Lien Notes and Third Lien Notes, we issued \$20.0 million and \$5.0 million in additional Senior Notes (the "Senior Incremental Notes") to Avenue Capital Management II, L.P., acting on behalf of its managed investment funds signatory thereto ("Avenue"), and Solus Core Opportunities Master Fund Ltd and its affiliates and co-investors ("Solus"), respectively. As with the other Senior Notes, amounts outstanding under the Senior Incremental Notes bear interest at a rate of 15% per annum, payable in-kind unless we elect to pay cash, and are secured by a first lien on the same assets securing our Senior Notes, on a pari passu basis. No commitment fee or structuring fee was payable in connection with the issuance of the Senior Incremental Notes.
- Effective June 21, 2010 we amended our Amended and Restated Certificate of Incorporation to effect a 1-for-7 reverse stock split. At the effective time of the reverse stock split, every seven shares of our pre-split common stock, with a par value \$0.001 per share, was automatically converted into one share of post-split common stock, with a par value \$0.007 share. The number of authorized shares of our common stock was reduced accordingly by a ratio of 1-for-7 from 400 million to 57.1 million shares. Outstanding stock incentive awards and shares available for future grants were also adjusted to give effect to the reverse split.

#### Subsequent Event

- On July 30, 2010, we signed a Stock Purchase Agreement to sell our remaining 65% ownership interest in our PacketVideo subsidiary to DOCOMO, a customer of PacketVideo, for approximate net proceeds of \$107.0 million, after deducting estimated direct and incremental costs of \$4.6 million (the "Transaction"). Of the net proceeds, we will retain \$12.5 million for working capital and permitted investments and redeem approximately \$94.5 million in principal and accrued interest on our Senior Notes. Upon completion of the Transaction, which is expected during our third quarter of 2010, PacketVideo will become a wholly owned subsidiary of DOCOMO. The Transaction remains subject to customary closing conditions, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act, and approval by NextWave stockholders. The Stock Purchase Agreement also includes provisions enabling us and/or DOCOMO to terminate the Stock Purchase Agreement in certain specified circumstances. Following a termination of the Stock



Purchase Agreement, we may be required to reimburse up to \$0.7 million of the aggregate expenses of DOCOMO under specified circumstances. In connection with the signing of the Stock Purchase Agreement, Dr. James C. Brailean resigned from his position as the Chief Executive Officer, Chief Operating Officer and President of NextWave and as a member of NextWave's Board of Directors. Dr. Brailean continues to serve as the President and Chief Executive Officer and as a member of the Board of Directors of PacketVideo.

## Our Business

NextWave Wireless Inc. is a holding company for a significant wireless spectrum portfolio. As a result of our global restructuring initiative, our continuing operations are focused on the management of our wireless spectrum interests.

Our total domestic spectrum holdings consist of approximately four billion MHz POPs (The term "MHz-POPs" is defined as the product derived from multiplying the number of megahertz associated with a license by the population of the license's service area), covering approximately 215.9 million total POPs, with 106.9 million POPs covered by 20 MHz or more of spectrum, and an additional 90.6 million POPs covered by at least 10 MHz of spectrum. In addition, a number of markets, including much of the New York City metropolitan region, are covered by 30 MHz or more of spectrum. Our domestic spectrum resides in the 2.3 GHz Wireless Communication Services ("WCS"), 2.5 GHz Broadband Radio Service ("BRS"/Educational Broadband Service ("EBS")), and 1.7/2.1 GHz Advanced Wireless Service ("AWS") AWS bands and offers propagation and other characteristics suitable to support high-capacity, mobile broadband services.

Our international spectrum held for continuing operations include 2.3 GHz licenses in Canada, covering 15 million POPs.

We continue to pursue the sale of our wireless spectrum holdings and any sale or transfer of the ownership of our wireless spectrum holdings is subject to regulatory approval. We expect that we will be required to successfully monetize most of our wireless spectrum assets in order to retire our debt.

To date, we have realized a positive return on the sale of the majority of our domestic AWS spectrum licenses. However, there can be no assurance that we will realize a similar return upon the sale of our remaining wireless spectrum holdings. The sale price of our wireless spectrum assets will be impacted by, among other things:

- the FCC's new technical rules relating to the operation of satellite digital audio radio services and services using our WCS spectrum licenses;
- the timing and associated costs of build out or substantial service requirements attached to our domestic and international spectrum licenses, where a failure to comply with these requirements could result in license forfeiture;
- timing of closure of potential sales, in particular if it is necessary to accelerate the planned sale of certain of our spectrum licenses in order to meet debt payment obligations;
- worldwide economic conditions which we believe have adversely affected manufacturers of telecommunications equipment and technology and led to a delay in global network deployments;
- availability of wireless spectrum in the United States in particular, which could be affected by potential government auctions of spectrum not previously available in the market; and
- availability of capital for prospective spectrum buyers, which has been negatively impacted by the downturn in the credit and financial markets.

As we have previously disclosed, our efforts to sell our wireless spectrum holdings on favorable terms has been delayed by current market conditions, as well as regulatory and other market activities involving potential buyers. We are continuing to have discussions with numerous parties who have expressed interest in our various spectrum assets. However, we believe that adverse economic conditions

continue to affect potential purchasers of our wireless spectrum, and there can be no assurance as to the timing of further spectrum sales or the sales prices that will be attained.

### ***Discontinued Operations***

The results of operations of our PacketVideo and Cygnus subsidiaries, and our Global Services and NextWave Network Product Support strategic business units, our Semiconductor segment and our WiMAX Telecom, Inquam and South American businesses, have been reported as discontinued operations in the consolidated financial statements for all periods presented, prior to sale or dissolution of the respective business.

Our discontinued international spectrum holdings include nationwide 3.5 GHz licenses in Switzerland; a nationwide 2.0 GHz license in Norway; and 2.5 GHz licenses in Argentina, collectively covering 28 million POPs.

## **RESULTS OF OPERATIONS**

The results of operations of our PacketVideo and Cygnus subsidiaries, and our Global Services and NextWave Network Product Support strategic business units, our Semiconductor segment and our WiMAX Telecom, Inquam and South American businesses, have been reported as discontinued operations in the consolidated financial statements for all periods presented.

### ***Comparison of Our Second Quarter of 2010 to Our Second Quarter of 2009 – Continuing Operations***

#### ***General and Administrative***

General and administrative expenses from continuing operations during the second quarter of 2010 were \$8.0 million compared to \$11.6 million for the second quarter of 2009. The \$3.6 million decrease is attributable primarily to the cost reductions resulting from the global restructuring initiative we implemented in the second half of 2008, which included reductions in workforce and certain overhead and discretionary costs, and the closure of certain facilities. The costs incurred in connection with our global restructuring initiative, including compensation related costs incurred related to terminated employees, costs incurred related to vacated leased facilities and other restructuring related costs, are included in restructuring charges.

Included in general and administrative expenses during each of the second quarters of 2010 and 2009 is \$1.9 million of amortization of finite-lived wireless spectrum. Also included in general and administrative expenses during the second quarters of 2010 and 2009 is \$0.3 million and \$0.7 million, respectively, of share-based compensation expense

#### ***Restructuring Charges***

In connection with the implementation of our global restructuring initiative, during the second quarter of 2009, our corporate support function incurred \$0.1 million in employee termination costs and \$0.2 million of costs related to the divestiture and closure of discontinued businesses. These costs were more than offset by credits totaling \$1.0 million in lease abandonment and related facility closure costs and contract termination costs that resulted from settlements of certain of our leases, software license and maintenance agreements which reduced our payment obligations.

#### ***Gain (loss) on Sales of Wireless Spectrum Licenses***

During the second quarter of 2010 we recognized net losses on sales of our wireless spectrum licenses of \$0.2 million, after deducting incremental costs of \$0.5 million. These net losses were partially reduced by lease payments received by us, pending completion of the sale of certain of our owned WCS spectrum licenses in the United States to a third party, of \$0.3 million and the forfeiture of a spectrum license sales deposit received by us of \$0.3 million.

During the second quarter of 2009, we completed sales of certain of our owned AWS spectrum licenses in the United States to third parties for net proceeds, after deducting direct and incremental selling costs, of \$3.7 million, and recognized a net gain on the sales of \$0.7 million. The net proceeds from the



sales were used to redeem a portion of the Senior Notes at a redemption price of 105% of the principal amount thereof plus accrued interest.

## **Interest Expense**

Interest expense from continuing operations during the second quarter of 2010 was \$54.2 million, as compared to \$39.1 million during the second quarter of 2009, an increase of \$15.1 million. The increase is primarily attributable to higher principal and paid-in-kind interest and the March 2010 Amendment and Waiver which increased interest rates on our Notes. Interest expense and interest accretion of the debt discounts and issuance costs related to our Senior Notes, Second Lien Notes and Third Lien Notes accounted for \$(1.1) million, \$1.1 million and \$14.9 million, respectively, of the increase (decrease).

Interest expense from continuing operations is expected to increase over the next twelve months due to increased interest rates on our Senior Notes, Second Lien Notes and Third Lien Notes and the higher discount on our Third Lien Notes resulting from the debt extinguishment. Interest expense will also be affected by the timing and amount of redemptions of our Senior Notes using the proceeds from asset sales and other financial activities. In addition, the accounting treatment of the maturity extension of our Third Lien Notes has resulted in a discount of \$164.8 million which will be amortized using the effective interest rate method over the remaining term of the Third Lien Notes due December 2011, which will significantly increase our recorded interest expense for financial reporting purposes.

## **Other Income and Expense, Net**

Other expense, net, from continuing operations during the second quarter of 2010 was \$1.2 million, as compared to other income, net of \$0.2 million during the second quarter of 2009, an increase of \$1.4 million. The increase in other expense, net, reflects primarily changes in the estimated fair values of our embedded derivatives on our Senior Notes, Second Lien Notes and Third Lien Notes aggregating \$1.3 million.

## **Income Tax Provision**

During the second quarters of 2010 and 2009, substantially all of our U.S. and foreign subsidiaries in our continuing operations had net losses for tax purposes with full valuation allowances and, therefore, no material income tax provision or benefit was recognized for these subsidiaries.

## ***Comparison of Our First Six Months of 2010 to Our First Six Months of 2009 – Continuing Operations***

### ***General and Administrative***

General and administrative expenses from continuing operations during the first six months of 2010 were \$13.9 million compared to \$20.7 million for the same period in 2009. The \$6.8 million decrease in general and administrative expenses from continuing operations during the first six months of 2010, as compared to the same period in 2009, is attributable primarily to the cost reductions resulting from the global restructuring initiative we implemented in the second half of 2008, which included reductions in workforce and certain overhead and discretionary costs, and the closure of certain facilities. The costs incurred in connection with our global restructuring initiative, including compensation related costs incurred related to terminated employees, costs incurred related to vacated leased facilities and other restructuring related costs, are included in restructuring charges.

Included in general and administrative expenses during the first six months of 2010 and 2009 is \$3.8 million and \$3.9 million, respectively, of amortization of finite-lived wireless spectrum licenses. Also included in general and administrative expenses during the first six months of 2010 and 2009 is \$0.6 million and \$1.2 million, respectively, of share-based compensation expense

### ***Asset Impairment Charges***

Through our continued efforts to sell our remaining domestic AWS spectrum licenses, we determined that the carrying value of these spectrum licenses exceeded their fair value based primarily on bids received and negotiations with third parties regarding the sale of these licenses which occurred in April 2009. Accordingly, during the first six months of 2009, we wrote-down the carrying value of our



domestic AWS spectrum licenses to their estimated fair value and recognized an asset impairment charge related to continuing operations of \$9.4 million.

Additionally, during the first six months of 2009, we recognized an asset impairment charge of \$0.2 million related to certain long-lived and prepaid assets utilized by our corporate administration functions.

### ***Restructuring Charges***

In connection with the implementation of our global restructuring initiative, during the first six months of 2009, our corporate support function incurred \$0.3 million in employee termination costs, \$0.4 million in lease abandonment and related facility closure costs and \$1.3 million of costs related to the divestiture and closure of discontinued businesses.

### **Gain on Sales of Wireless Spectrum Licenses**

During the first six months of 2010, we recognized net gains on sales of our wireless spectrum licenses of \$12,000, after deducting incremental costs of \$0.7 million. These net losses were partially reduced by lease payments received by us, pending completion of the sale of certain of our owned WCS spectrum licenses in the United States to a third party, of \$0.3 million and the forfeiture of a spectrum license sales deposit received by us of \$0.3 million.

During the first six months of 2009, we completed sales of certain of our owned AWS spectrum licenses in the United States to third parties for net proceeds, after deducting direct and incremental selling costs, of \$5.5 million, and recognized a net gain on the sales of \$0.7 million. The net proceeds from the sales were used to redeem a portion of the Senior Notes at a redemption price of 105% of the principal amount thereof plus accrued interest.

### **Interest Expense**

Interest expense from continuing operations during the first six months of 2010 was \$98.3 million, compared to \$75.9 million during the first six months of 2009, an increase of \$22.4 million. The increase is primarily attributable to higher principal and paid-in-kind interest and the Amendment and Waiver which increased interest rates on our Notes. Interest expense and interest accretion of the debt discounts and issuance costs related to our Senior Notes, Second Lien Notes and Third Lien Notes accounted for \$(0.9) million, \$3.2 million and \$19.9 million, respectively, of the increase (decrease).

### **Gain on Extinguishment of Debt**

The Amendment and Waiver modification to our Third Lien Notes, which increased the interest rate payable on our Third Lien Notes, was determined to have been accomplished with debt instruments that are substantially different, in accordance with generally accepted accounting principles, resulting in an effective extinguishment of the existing Third Lien Notes and a new issue of Third Lien Notes as of the modification date for accounting purposes. The new issue of Third Lien Notes was recorded at its estimated fair value using a discount rate of 40%, and that amount was used to determine net debt extinguishment gain of \$38.0 million. The net gain was determined as the difference between the remaining unamortized discount under the extinguished Third Lien Notes of \$123.1 million and the new discount of \$164.8 million, plus \$9.6 million of embedded derivative liabilities that were eliminated at the date of the extinguishment, partially offset by \$13.3 million in fee notes issued to the Third Lien noteholders. The new discount of \$164.8 million is amortized using the effective interest rate method over the remaining term of the Third Lien Notes due December 2011 which will significantly increase our interest expense for financial reporting purposes.

### **Other Income and Expense, Net**

Other income, net, from continuing operations during the first six months of 2010 was \$9.4 million, as compared to other expense, net of \$1.3 million during the first six months of 2009, an increase of \$10.7 million. The increase in other income, net, reflects primarily changes in the estimated fair values of our embedded derivatives on our Senior Notes, Second Lien Notes and Third Lien Notes aggregating \$9.1 million and cash of \$1.0 million released from escrow related to our reorganization in 2005. Of the \$9.1 million change in the estimated fair values of our embedded derivative liabilities, \$9.6 million of the



credit to other income (expense) resulted primarily from the Amendment and Waiver which eliminated the Second Lien Note redemption premiums required upon an asset sale or change in control.

## Income Tax Provision

During the first six months of 2010 and 2009 substantially all of our U.S. and foreign subsidiaries in our continuing operations had net losses for tax purposes and, therefore, no material income tax provision or benefit was recognized for these subsidiaries.

## Comparison of Our Second Quarter and First Six Months of 2010 to Our Second Quarter and First Six Months of 2009 – Discontinued Operations

The results of operations of our discontinued Multimedia and Semiconductor segments and our WiMAX Telecom, Inquam and South American businesses, which were previously in our Strategic Initiatives segment, are as follows:

(in millions)	Three Months Ended			Six Months Ended		
	July 3, 2010	June 27, 2009	Increase (Decrease)	July 3, 2010	June 27, 2009	Increase (Decrease)
Revenues	\$ 8.8	\$ 13.9	\$ (5.1)	\$ 20.5	\$ 32.1	\$ (11.6)
Revenues – related party	2.3	—	2.3	9.4	—	9.4
Total revenues	11.1	13.9	(2.8)	29.9	32.1	(2.2)
Operating expenses:						
Cost of revenues	5.9	7.0	(1.1)	12.0	15.0	(3.0)
Cost of revenues – related party	0.2	—	0.2	0.5	—	0.5
Engineering, research and development	4.5	4.8	(0.3)	9.5	14.5	(5.0)
Sales and marketing	1.9	2.3	(0.4)	4.9	5.7	(0.8)
General and administrative	3.1	4.8	(1.7)	6.8	9.1	(2.3)
Asset impairment charges	0.3	1.5	(1.2)	2.0	11.4	(9.4)
Restructuring charges	0.1	0.3	(0.2)	0.9	4.9	(4.0)
Total operating expenses	16.0	20.7	(4.7)	36.6	60.6	(24.0)
Net gains (losses) on business divestitures	(5.2)	—	(5.2)	(5.2)	0.1	(5.3)
Loss from operations	(10.1)	(6.8)	(3.3)	(11.9)	(28.4)	16.5
Other income and (expense), net	0.5	0.6	(0.1)	0.5	(0.3)	0.8
Loss before income taxes	(9.6)	(6.2)	(3.4)	(11.4)	(28.7)	17.3
Income tax provision	—	—	—	(0.1)	(0.2)	0.1
Net loss from discontinued operations	(9.6)	(6.2)	(3.4)	(11.5)	(28.9)	17.4
Net loss attributed to noncontrolling interest in subsidiary	1.7	—	1.7	1.2	—	1.2
Net loss from discontinued operations attributed to NextWave	\$ (7.9)	\$ (6.2)	\$ (1.7)	\$ (10.3)	\$ (28.9)	\$ 18.6

## Revenues

Of the \$2.8 million and \$2.2 million decrease in revenues from discontinued operations during the second quarter and first six months of 2010 when compared to the same periods in 2009, respectively, \$1.5 million and \$0.5 million was attributable to lower royalty and support revenues recognized by our PacketVideo subsidiary and \$1.3 million and \$1.7 million was attributable to our bankruptcy liquidation proceedings during the fourth quarter of 2009 for WiMAX Telecom GmbH, the holding company for our discontinued WiMAX Telecom businesses in Austria and Croatia.

Related party revenues represent sales of a version of PacketVideo's multimedia player to DOCOMO for installation into DOCOMO handset models. In July 2009, DOCOMO became a related party when its subsidiary purchased a 35% noncontrolling interest in our PacketVideo subsidiary.



## ***Cost of Revenues***

Of the \$0.9 million and \$2.5 million decrease in cost of revenues from discontinued operations during the second quarter and first six months of 2010 when compared to the same periods in 2009, respectively, \$(0.2) million and \$0.6 million were attributable to lower revenues recognized by our PacketVideo subsidiary and \$1.1 million and \$1.9 million were attributable to our divestitures of our discontinued WiMAX Telecom businesses in Austria, Croatia, and Latin America.

Included in total cost of revenues from discontinued operations during each of the second quarters of 2010 and 2009 is \$0.7 million of amortization of purchased intangible assets. Also included in total cost of revenues during the second quarters of 2010 and 2009 is \$0.3 million and \$0.2 million, respectively, of share-based compensation expense.

Included in total cost of revenues from discontinued operations during the first six months of 2010 and 2009 is \$1.4 million and \$1.5 million, respectively, of amortization of purchased intangible assets. Also included in total cost of revenues during the first six months of 2010 and 2009 is \$0.6 million and \$0.4 million, respectively, of share-based compensation expense.

## ***Engineering, Research and Development***

The \$0.3 million decrease in engineering, research and development expenses from discontinued operations during the second quarter of 2010 when compared to the same period in 2009 is primarily attributable to a \$0.7 million decrease in third party contract expenses and other operating expenses of our PacketVideo subsidiary, partially offset by \$0.2 million in lower expense credits that were recognized during second quarter of 2009 by our Semiconductor segment.

The \$5.0 million decrease in engineering, research and development expenses from discontinued operations during the first six months of 2010 when compared to the same periods in 2009, respectively, is primarily attributable to a \$1.7 million decrease in third party contract expenses and other operating expenses of our PacketVideo subsidiary and a \$3.8 million decrease attributable to the shutdown of the operations of our semiconductor business in the first quarter of 2009. These decreases were partially offset by \$0.5 million in expense credits recognized by our Networks segment that were recognized during the first six months of 2009.

The compensation related costs incurred in relation to the employees terminated in connection with the shutdown of our semiconductor business are included in restructuring charges.

Included in engineering, research and development expenses during the second quarters of 2010 and 2009 is \$0.3 million and \$0.2 million, respectively, and during the first six months of 2010 and 2009 is \$0.6 million and \$0.5 million, respectively, of share-based compensation expense.

## ***Sales and Marketing***

The \$0.4 million and \$0.8 million decrease in sales and marketing expenses from discontinued operations during the second quarter and first six months of 2010 when compared to the same periods in 2009 is primarily attributable to our PacketVideo subsidiary, the shutdown of the operations of our semiconductor business in the first quarter of 2009 and the insolvency and wind-down of WiMAX Telecom GmbH, the holding company for our discontinued WiMAX Telecom businesses in Austria and Croatia, during the fourth quarter of 2009. The compensation related costs incurred in relation to the employees terminated in connection with the shutdown of our semiconductor business are included in restructuring charges.

Included in sales and marketing expenses from discontinued operations during each of the second quarters of 2010 and 2009 is \$0.3 million and during the first six months of 2010 and 2009 is \$0.5 million and \$0.6 million, respectively, of amortization of purchased intangible assets. Also included in sales and marketing expenses during each of the second quarters and first six months of 2010 and 2009 is \$0.1 million of share-based compensation expense.

## ***General and Administrative***

The \$1.7 million and \$2.3 million decrease in general and administrative expenses from discontinued operations during the second quarter and first six months of 2010 when compared to the same periods in 2009 is primarily attributable to lower operating expenses at our WiMAX Telecom subsidiary resulting from cost reduction actions implemented in the first quarter of 2009 and lower amortization



expense resulting from our classification of our wireless spectrum licenses in Europe as assets held for sale, which, in accordance with accounting guidance for assets while held for sale, we are no longer amortizing. This decrease was partially offset by increases in general and administrative expenses of our PacketVideo subsidiary of \$0.5 million and \$0.8 million during the second quarter and first six months of 2010 resulting primarily from increased share-based compensation and other operating expenses.

Included in general and administrative expenses during the second quarters of 2010 and 2009 is \$0 and \$0.4 million, respectively, of amortization of purchased intangible assets. Also included in general and administrative expenses during the second quarters of 2010 and 2009 is \$0.5 million and \$0.4 million, respectively, of share-based compensation expense.

Included in general and administrative expenses during the first six months of 2010 and 2009 is \$0.1 million and \$1.3 million, respectively, of amortization of purchased intangible assets. Also included in general and administrative expenses during the first six months of 2010 and 2009 is \$0.9 million and \$0.8 million, respectively, of share-based compensation expense.

### ***Asset Impairment Charges***

In connection with our ongoing discussions to sell our Nevada office building, we determined that indicators of impairment were present, and, accordingly, based on the accounting guidance for the impairment or disposal of long-lived assets, we performed an assessment to determine if the carrying value of our building was recoverable through estimated undiscounted future cash flows resulting from the use of the assets and their eventual disposition. During the second quarter and first six months of 2010, we recognized additional asset impairment charges of \$1.5 million, all of which is reported as asset impairment charges in discontinued operations.

Through our continued efforts to sell our wireless spectrum licenses in Europe and Argentina during 2010, we determined that the carrying values of certain of these spectrum licenses exceeded their fair values and, accordingly, during the first six months of 2010, we wrote-down the carrying values of these licenses to their estimated fair values and recognized asset impairment charges of \$0.5 million. Upon the sale and deconsolidation during the second quarter of 2010, of our Slovakia based subsidiary, WiMax Telecom SRO, we reclassified \$1.2 million of the asset impairment charge on our wireless spectrum licenses in Slovakia that was recognized during the first quarter of 2010 against the net losses on business divestitures.

During the first six months of 2009, we determined that the carrying values of our remaining domestic AWS spectrum licenses and our wireless spectrum licenses in Europe exceeded their fair values and, accordingly, during the first six months of 2009, we wrote-down the carrying values of these licenses to their estimated fair values and recognized asset impairment charges of \$6.8 million.

During the first six months of 2009, we determined that the carrying values of the long-lived assets in our semiconductor business exceeds their fair values. Accordingly, during the second quarter and first six months of 2009, we recognized additional asset impairment charges of \$1.5 million and \$4.6 million, respectively.

### ***Restructuring Charges***

During the second quarter and first six months of 2010, we incurred \$0.1 million and \$0.9 million of expense resulting primarily from changes in our estimated contract settlement costs related to our discontinued Semiconductor operations.

In connection with the implementation of our global restructuring initiative, during the second quarter and first six months of 2009, we incurred employee termination costs of \$0 and \$4.6 million, and \$0.3 million and \$0.3 million in contract termination costs, respectively, related to our discontinued operations. The employee termination costs incurred in the first six months of 2009 primarily resulted from the termination of approximately 230 employees upon the shutdown of our semiconductor business.

### ***Net Gains on Business Divestitures***

The net loss on business divestitures during the second quarter and first six months of 2010 of \$4.6 million primarily relates to a \$8.8 million loss on our sale of WiMax Telecom SRO in Slovakia. This



loss was partially offset by a \$4.2 million gain on the assumption of debt by the buyers of our two Chilean wireless spectrum businesses.

The net gain on business divestitures during the first six months of 2009 primarily relates to \$0.1 million in cash received from the sale of assets during the first quarter of 2009.

### ***Other Expense, Net***

Other expense, net, during the second quarter of 2010 of \$39,000, decreased from other income, net, during the second quarter of 2009 of \$0.7 million and was primarily attributable to \$0.4 million in lower foreign currency exchange rate gains and \$0.2 million in higher interest expense. Other expense, net, during the first six months of 2010 of \$18,000 decreased from \$0.3 million in other expense, net, during the first six months of 2009 and was primarily attributable to \$0.6 million in higher net foreign currency exchange rate gains, partially offset by \$0.3 million in higher interest expense.

### ***Income Tax Provision***

During the first six months of 2010 and 2009, substantially all of our U.S. subsidiaries in discontinued operations had net losses for tax purposes with full valuation allowances and, therefore, no material income tax provision or benefit was recognized for these subsidiaries. Certain of our controlled foreign corporations had net income for tax purposes based on cost sharing and transfer pricing arrangements with our United States subsidiaries in relation to research and development expenses incurred.

The effective income tax rate for discontinued operations for the second quarter of 2010 was (0.1)% resulting in a \$10,000 income tax provision on a pre-tax loss from discontinued operations of \$9.6 million, which primarily relates to \$0.1 million in foreign withholding taxes on royalty payments received from our PacketVideo customers, partially offset by \$0.1 million in an income tax benefit of certain controlled foreign corporations.

The effective income tax rate for discontinued operations for the first six months of 2010 was (0.9)%, resulting in a \$0.1 million income tax provision on a pre-tax loss from discontinued operations of \$11.4 million, which primarily relates to \$0.2 million in foreign withholding taxes on royalty payments received from our PacketVideo customers, partially offset by \$0.1 million in an income tax benefit of certain controlled foreign corporations.

### ***Noncontrolling Interest***

On July 2, 2009, we sold a 35% noncontrolling interest in our PacketVideo subsidiary to DOCOMO, a customer of PacketVideo. During the second quarter and first six months of 2010, the net income from discontinued operations attributed to the noncontrolling interest in our subsidiary totaled \$1.7 million and \$1.2 million, respectively, and represents DOCOMO's share of PacketVideo's net loss during that period.

## **LIQUIDITY AND CAPITAL RESOURCES**

We have funded our operations, business combinations, strategic investments and wireless spectrum license acquisitions primarily with the \$550.0 million in cash received in our initial capitalization in April 2005, the net proceeds of \$295.0 million from the issuance of the Senior Notes in 2006 and 2010, the net proceeds of \$351.1 million from our issuance of Series A Preferred Stock in March 2007 and the net proceeds of \$101.0 million from our issuance of the Second Lien Notes in October 2008 and July 2009. Our total unrestricted cash and cash equivalents held by continuing operations totaled \$31.6 million at July 3, 2010. We had net working capital of \$63.5 million at July 3, 2010.

In an effort to reduce our future working capital requirements and in order to comply with the terms of our Senior Notes, Second Lien Notes and Third Lien Notes, in the second half of 2008, our Board of Directors approved the implementation of a global restructuring initiative, pursuant to which we have divested, either through sale, dissolution or closure, our network infrastructure businesses and our semiconductor business. We have also taken other cost reduction actions. The actions completed as a result of our global restructuring initiative are described in more detail in Note 1 to our Condensed Consolidated Financial Statements in this



Effective as of March 16, 2010, we entered into an Amendment and Limited Waiver (the "Amendment and Waiver") to the agreements governing our Senior Notes, Second Lien Notes and Third Lien Notes. Pursuant to the Amendment and Waiver, the maturity date of our Senior Notes was extended from July 17, 2010 to July 17, 2011, with an additional extension to October 17, 2011 if certain conditions are met, including the pendency of asset sales that would yield net proceeds sufficient to repay all then-outstanding Senior Notes. In addition, the maturity date of our Second Lien Notes was extended from December 31, 2010 to November 30, 2011. As a result of the Amendment and Waiver, the interest payable on our Senior Notes and Second Lien Notes was increased to a rate of 15% per annum and the interest payable on our Third Lien Notes was increased to a rate of 12% per annum initially, increasing 1% per annum on each of December 31, 2010, March 30, 2011, June 30, 2011 and September 30, 2011 to a maximum of 16%. After giving effect to the Amendment and Waiver, all Notes will receive only payment-in-kind interest for the full term of such Notes, unless we elect to pay cash interest, and the redemption premium on the Notes was eliminated. The Amendment and Waiver reduced the requirement to maintain a minimum cash balance from \$5 million to \$1 million and, after payment in full of certain designated Senior Notes (the "Priority Notes") with an aggregate principal amount of \$56.5 million at July 3, 2010 and the Senior Incremental Notes (as defined below) with an aggregate principal amount of \$25.5 million at July 3, 2010, permits us to retain up to \$12.5 million of asset sale proceeds for general working capital purposes and permitted investments. As consideration for the Amendment and Waiver, we paid an amendment fee to each Holder through the issuance of additional Notes under the applicable Note Agreements in an amount equal to 2.5% of the outstanding principal and accrued and unpaid interest on such Holder's existing Notes (the "Fee Notes").

As permitted by the Amendment and Waiver, we issued \$20.0 million and \$5.0 million in additional Senior Notes (the "Senior Incremental Notes") during the second quarter of 2010 to Avenue Capital Management II, L.P., acting on behalf of its managed investment funds signatory thereto, and Solus Core Opportunities Master Fund Ltd and its affiliates and co-investors, respectively. As with the other Senior Notes, amounts outstanding under the Senior Incremental Notes bear interest at a rate of 15% per annum, payable in-kind unless we elect to pay cash, and are secured by a first lien on the same assets securing our Senior Notes, on a pari passu basis. No commitment fee or structuring fee was payable in connection with the issuance of the Senior Incremental Notes.

Our Senior Notes, having an aggregate principal amount of \$210.3 million at July 3, 2010, will mature in July 2011, and our Second Lien Notes, having an aggregate principal amount of \$155.1 million at July 3, 2010, will mature in November 2011. In addition, our Third Lien Notes, having an aggregate principal amount of \$564.9 million at July 3, 2010, will mature in December 2011. The increase in payment in-kind interest rates on the Notes effective March 16, 2010 will increase the principal amount of this debt upon retirement. Our current cash reserves and cash generated from operations will not be sufficient to meet these payment obligations. We must consummate sales of our wireless spectrum assets yielding proceeds, together with the pending sale of our remaining interest in PacketVideo, that are sufficient to retire this indebtedness. If we are unable to pay our debt at maturity, the holders of our notes could proceed against the assets pledged to secure these obligations, which include our spectrum assets and the capital stock of our material subsidiaries, which would impair our ability to continue as a going concern. Insufficient capital to repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing in the United States Bankruptcy Court.

In 2010, we have capital expenditure needs associated with certain build-out or substantial service requirements which apply to our licensed wireless spectrum, which generally must be satisfied as a condition of license renewal. The substantial service build-out deadline for our domestic Wireless Communication Services ("WCS") spectrum was July 21, 2010 under the Federal Communication Commission ("FCC") rules in existence at that time. However, the FCC adopted new rules on May 20, 2010, that, when effective, (anticipated to be September 1, 2010) purported to replace the July 21, 2010 substantial service requirements with new requirements that must be met 42 and 72 months after the date that new WCS technical and service rules become effective. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. While we believe we have made the capital expenditures required to complete the applicable WCS build-out requirements, we may be required to make additional capital expenditures to comply with the new rules if the FCC does not accept our substantial service showings under the rules in effect on July 20, 2010. The substantial service deadline for Educational Broadband Service and Broadband Radio Service ("EBS/BRs") spectrum is May 1, 2011; however, most of our EBS leases require us to complete most build out activities in



advance of the FCC's substantial service deadline. Failure to meet our service requirements could result in forfeiture of the applicable licenses.

We believe that the completion of our asset divestiture and cost reduction actions, our current cash and cash equivalents, our ability to pay payment-in-kind interest in lieu of cash interest to the holders of our secured notes, and access to \$12.5 million of future asset sales proceeds as permitted by secured note agreements will allow us to meet our estimated operational cash requirements at least through June 2011. Should we be unable to achieve the revenues and/or cash flows through June 2011 as contemplated in our current operating plan, or if we were to incur significant unanticipated expenditures in excess of our available asset sales, we will seek to identify additional capital resources including the use of our remaining \$10.0 million incremental Second Lien Notes debt basket, and will implement certain additional actions to reduce our working capital requirements including staff reductions.

The following table presents our working capital (deficit), and our cash and cash equivalents balances:

<i>(in millions)</i>	July 3, 2010	April 3, 2010	Increase (Decrease) for the Three Months Ended July 3, 2010	January 2, 2010	Increase (Decrease) for the Six Months Ended July 3, 2010
Working capital (deficit)	\$ 63.5	\$ (2.8)	\$ 66.3	\$ (8.0)	\$ 71.5
Cash and cash equivalents	\$ 31.6	\$ 3.4	\$ 28.2	\$ 15.1	\$ 16.5
Cash and cash equivalents – discontinued operations	2.2	4.8	(2.6)	5.4	(2.2)
Total cash and cash equivalents	<u>\$ 33.8</u>	<u>\$ 8.2</u>	<u>\$ 25.6</u>	<u>\$ 20.5</u>	<u>\$ 14.3</u>

The change from working capital deficits of \$2.8 million and \$8.0 million at April 3, 2010 and January 2, 2010, respectively, to positive working capital of \$63.5 million at July 3, 2010 resulted from cash proceeds of \$25.0 million from the issuance of our Senior Incremental Notes and the reclassification of the noncurrent assets and liabilities of our Multimedia Segment to current as this business is anticipated to be sold within the next 3 months.

### Uses of Cash, Cash Equivalents and Marketable Securities

The following table presents our utilization of cash, cash equivalents and marketable securities:

<i>(in millions)</i>	Three Months Ended		Six Months Ended	
	July 3, 2010	June 27, 2009	July 3, 2010	June 27, 2009
Beginning cash, cash equivalents and marketable securities	\$ 8.2	\$ 18.9	\$ 20.5	\$ 61.5
Net operating cash used by continuing operations	(3.5)	(2.5)	(10.4)	(29.5)
Proceeds from the sale of wireless spectrum licenses	0.5	3.8	0.7	5.5
Proceeds from the sale of ARS securities	24.0	—	24.0	—
Proceeds from long-term obligations	25.0	—	25.0	—
Payments received on notes receivable	7.1	—	7.1	—
Payments on long-term obligations, excluding wireless spectrum lease obligations	(21.4)	(5.2)	(21.4)	(6.0)
Cash paid for wireless spectrum license lease obligations	(0.1)	(0.2)	(3.8)	(0.7)
Purchase of property and equipment	(3.8)	—	(3.8)	—
Other, net	0.3	0.3	0.1	0.5
Net operating, investing and financing cash provided (used) by discontinued operations	<u>(2.5)</u>	<u>2.7</u>	<u>(4.2)</u>	<u>(13.5)</u>
Ending cash, cash equivalents and marketable securities	33.8	17.8	33.8	17.8
Less: ending cash, cash equivalents and marketable securities-discontinued operations	<u>(2.2)</u>	<u>(9.9)</u>	<u>(2.2)</u>	<u>(9.9)</u>
Ending cash, cash equivalents and marketable securities-continuing operations	<u>\$ 31.6</u>	<u>\$ 7.9</u>	<u>\$ 31.6</u>	<u>\$ 7.9</u>



## Significant Financing Activities During the First Six Months of 2010

Effective as of March 16, 2010, we entered into the Amendment and Waiver to the agreements governing our Senior Notes, Second Lien Notes and Third Lien Notes extending the maturity dates of our Senior and Second Lien Notes from July 17, 2010 to July 17, 2011 and from December 31, 2010 to November 30, 2011, respectively. The interest payable on our Senior and Second Lien Notes was increased to a rate of 15% per annum and the interest payable on our Third Lien Notes was increased to a rate of 12% per annum initially, increasing 1% per annum on each of December 31, 2010, March 30, 2011, June 30, 2011 and September 30, 2011 to a maximum of 16%. After giving effect to the Amendment and Waiver, all Notes will receive only payment-in-kind interest for the full term of such Notes, unless we elect to pay cash interest, and the redemption premium on the Notes was eliminated. The Amendment and Waiver reduced the requirement to maintain a minimum cash balance from \$5.0 million to \$1.0 million and, after payment in full of certain designated Senior Notes with an aggregate principal amount of \$56.5 million at July 3, 2010 and the Senior Incremental Notes with an aggregate principal amount of \$25.5 million at July 3, 2010, permits us to retain up to \$12.5 million of asset sale proceeds for general working capital purposes and permitted investments. As consideration for the Amendment and Waiver, we paid an amendment fee to each Holder through the issuance of additional Notes under the applicable Note Agreements in an amount equal to 2.5% of the outstanding principal and accrued and unpaid interest on such Holder's existing Notes as of March 16, 2010. The Fee Notes were paid on March 16, 2010 through the issuance of \$4.3 million in Senior Notes, \$3.6 million in Second Lien Notes and \$13.3 million in Third Lien Notes and will accrue interest and become payable in accordance with the terms of the respective Note Agreements.

In connection with the Amendment and Waiver, we issued \$20.0 million and \$5.0 million in Senior Incremental Notes to Avenue and Solus, respectively. As with the other Senior Notes, amounts outstanding under the Senior Incremental Notes bear interest at a rate of 15% per annum, payable in-kind unless we elect to pay cash, and are secured by a first lien on the same assets securing our Senior Notes, on a pari passu basis. No commitment fee or structuring fee was payable in connection with the issuance of the Senior Incremental Notes.

The Amendment and Waiver to our Third Lien Notes, which increased the interest rate payable on our Third Lien Notes, was determined to have been accomplished with debt instruments that are substantially different, in accordance with generally accepted accounting principles, resulting in an effective extinguishment of the existing Third Lien Notes and a new issue of Third Lien Notes as of the modification date for accounting purposes. The new issue of Third Lien Notes was recorded at its estimated fair value using a discount rate of 40%, and that amount was used to determine the net debt extinguishment gain of \$38.0 million recognized during the first six months of 2010, in other income in the accompanying consolidated statements of operations. The net gain of \$38.0 million was determined as the difference between the remaining unamortized discount under the extinguished Third Lien Notes of \$123.1 million and the new discount of \$164.8 million, plus \$9.6 million of embedded derivative liabilities that were eliminated at the date of the extinguishment, partially offset by \$13.3 million in fee notes issued to the Third Lien noteholders. The new discount of \$164.8 million is amortized using the effective interest rate method over the remaining term of the Third Lien Notes due December 2011 which will significantly increase our interest expense for financial reporting purposes.

## Significant Investing Activities Subsequent to the Second Quarter of 2010

On July 30, 2010, we signed a Stock Purchase Agreement to sell our remaining 65% ownership interest in our PacketVideo subsidiary to DOCOMO, a customer of PacketVideo, for approximate net proceeds of \$107.0 million, after deducting estimated direct and incremental costs of \$4.6 million (the "Transaction"). Of the net proceeds we expect to retain \$12.5 million for working capital and permitted investments and redeem approximately \$94.5 million in principal and accrued interest on our Senior Notes. In July 2009, DOCOMO acquired a 35% ownership interest in PacketVideo.

Upon completion of the Transaction, which is expected during our third quarter of 2010, PacketVideo will become a wholly owned subsidiary of DOCOMO. The Transaction remains subject to customary closing conditions, including clearance under the Hart-Scott-Rodino Antitrust Improvements

Act, and approval by NextWave stockholders. The Stock Purchase Agreement also includes provisions enabling us and/or DOCOMO to terminate the Stock Purchase Agreement in certain specified circumstances. Following a termination of the Stock Purchase Agreement, we may be required to reimburse up to \$0.7 million of the aggregate expenses of DOCOMO under specified circumstances.

## **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

Our discussion and analysis of our results of operations and liquidity and capital resources are based on our consolidated financial statements which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates and judgments, including those related to revenue recognition, valuation of intangible assets and investments, and litigation. We base our estimates on historical and anticipated results and trends and on various other assumptions that we believe are reasonable under the circumstances, including assumptions as to future events. These estimates form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. By their nature, estimates are subject to an inherent degree of uncertainty. Actual results that differ from our estimates could have a significant adverse effect on our operating results and financial position. Our accounting policies are described in more detail in Note 1 to our consolidated financial statements for the year ended January 2, 2010, contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 2, 2010.

### ***Accounting for Troubled Debt Restructurings***

Upon our debt modification in March 2010, we first reviewed the modification to determine if it constituted a troubled debt restructuring. A restructuring of a debt constitutes a troubled debt restructuring if the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider. A creditor is deemed to have granted a concession if the debtor's effective borrowing rate on the restructured debt, after giving effect to all the terms of the restructured debt, including any new or revised sweeteners such as the Fee Notes and Senior Incremental Notes, is less than the effective borrowing rate of the old debt immediately before the restructuring.

To determine if the noteholders granted us a concession as a result of the Amendment and Waiver, we determined a weighted average effective interest rate of the old aggregate debt immediately before the restructuring by using the respective stated interest rates in effect prior to the Amendment and Waiver plus the respective effective interest rates used for amortization of discounts and issue costs. We then determined the respective total cash flows under the new terms of each note and solved for the discount rate that equated these cash flows to the aggregate carrying value of the old debt at March 16, 2010. We also considered the current fair value of the \$25.0 million in Senior Incremental Notes which was made possible by the Amendment and Waiver. We determined that the weighted average effective rate on the new restructured debt was not less than that of the old debt, and, therefore, concluded that a concession was not considered to have been granted to us and that troubled debt accounting provisions do not apply.

### ***Accounting for Debt Modifications and Extinguishments***

There are two approaches to accounting for debt modifications. If the modification is deemed to have been accomplished with debt instruments that are substantially different then the modification is accounted for as a debt extinguishment, whereby the new debt instrument is initially recorded at fair value, and that amount is used to determine the debt extinguishment gain or loss to be recognized and the effective rate of the new instrument. If the present value of the cash flows under the terms of the new debt instrument is at least ten percent different from the present value of the remaining cash flows under the terms of the original instrument, the modification is deemed to have been accomplished with debt instruments that are substantially different. Any fees paid by the debtor to the creditor are associated with the extinguishment of the old debt instrument and are included in determining the debt extinguishment gain or loss to be recognized. Costs incurred with third parties directly related to the exchange or modification are associated with the new debt instrument and amortized over the term of the new debt instrument using the interest method in a manner similar to debt issue costs.



If it is determined that the present values of the original and new debt instruments are not substantially different, then a new effective interest rate is determined based on the carrying amount of the original debt instrument and the revised cash flows. Any fees paid by the debtor to the creditor are associated with the replacement or modified debt instrument and, along with any existing unamortized premium or discount, amortized as an adjustment of interest expense over the remaining term of the replacement or modified debt instrument using the interest method. Costs incurred with third parties directly related to the exchange or modification are expensed as incurred.

We determined that present values of the original and new Senior Notes and Second Lien Notes debt instruments were not substantially different and, therefore, concluded that these modifications do not receive debt extinguishment accounting treatment. We calculated new respective effective interest rates as of the modification date of March 16, 2010 based on the carrying amount of the original debt instruments and the revised cash flows. The Fee Notes paid by us to the Senior and Second Lien noteholders of \$4.3 million and \$3.6 million, respectively, along with changes in the related embedded derivatives and the existing unamortized discounts, are amortized as an adjustment to interest expense over the remaining term of the respective modified debt instruments using the interest method.

We determined that the modification of our Third Lien Notes was accomplished with debt instruments that were substantially different and, therefore, concluded that debt extinguishment accounting treatment should be applied. The new issue of Third Lien Notes was recorded at its estimated fair value using a discount rate of 40%, which represents the estimated incremental borrowing rate of our Third Lien Notes that was determined by a third party valuation group, and that amount was used to determine a net debt extinguishment gain of \$38.0 million that was recognized during the first six months of 2010 in other income in the accompanying consolidated statements of operations. The net gain of \$38.0 million was determined as the difference between the remaining unamortized discount under the extinguished Third Lien Notes of \$123.1 million and the new discount of \$164.8 million, plus \$9.6 million of embedded derivative liabilities that were eliminated at the date of the extinguishment, partially offset by \$13.3 million in Fee Notes issued to the Third Lien noteholders. The new discount of \$164.8 million is amortized using the effective interest rate method over the remaining term of the Third Lien Notes due December 2011 which will significantly increase our interest expense. The estimated fair value and related gain on extinguishment is sensitive to fluctuations in our incremental borrowing rate. For instance, a 5% decrease in the estimated incremental borrowing rate of our Third Lien Notes would have reduced the gain on extinguishment of debt and reduced our future interest expense by \$25.8 million.

Other than the discussion above, there have been no significant changes in our critical accounting policies and estimates from January 2, 2010.

## Contractual Obligations

The following table summarizes our cash contractual obligations for continuing and discontinued operations at July 3, 2010, and the effect that such obligations are expected to have on our liquidity and cash flows in future periods.

<i>(in thousands)</i>	Payments Due by Fiscal Year Period				
	Total	Remainder of 2010	Years 2011-2012	Years 2013-2014	Years 2015 and Thereafter
<b>Continuing Operations:</b>					
Long-term obligations <sup>(1)(2)</sup>	\$ 970,427	\$ 319	\$ 940,164	\$ 8,420	\$ 21,524
Operating leases	233	70	163	—	—
	<u>970,660</u>	<u>389</u>	<u>940,327</u>	<u>8,420</u>	<u>21,524</u>
<b>Discontinued Operations:</b>					
Services and other purchase agreements <sup>(3)</sup>	12,446	2,061	2,232	—	8,153
Operating leases	6,770	806	3,385	2,021	558
	<u>19,216</u>	<u>2,867</u>	<u>5,617</u>	<u>2,021</u>	<u>8,711</u>
<b>Total</b>	<b>\$ 989,876</b>	<b>\$ 3,256</b>	<b>\$ 945,944</b>	<b>\$ 10,441</b>	<b>\$ 30,235</b>

- (1) Amounts presented do not include cash interest payments on the Senior Notes or the future issuance of additional Senior Notes, Second Lien Notes and Third Lien Notes in payment of interest. Except for the Priority Notes, we have assumed that the remaining principal balance of the Senior Notes as well as the Second Lien Notes and Third Lien Notes will not be repaid until their respective maturity dates.



- (2) The March 16, 2010 Amendment and Waiver of our Senior Note, Second Lien Note and Third Lien Note agreements provides for: an extension of the maturity date of our Senior Notes from July 17, 2011 to October 17, 2011 if certain conditions are met; provides that all Notes will receive only payment-in-kind interest for the full term of such Notes, unless we elect to pay cash interest; provides for the payment of the Priority Notes; and permits us to retain up to \$12.5 million of asset sale proceeds for general working capital purposes and permitted investments.
- (3) On July 30, 2010 we signed a definitive agreement to sell our remaining 65% ownership in our PacketVideo Corporation ("PacketVideo") subsidiary to NTT DOCOMO, Inc. ("DOCOMO"), a customer of PacketVideo, for net proceeds of \$107.0 million, after deducting direct and incremental costs of \$4.6 million. The sale remains subject to customary closing conditions, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act, and approval by NextWave stockholders. Upon closing of the sale, we expect to retain \$12.5 million of the net proceeds for working capital and permitted investments and redeem approximately \$94.5 million in principal and accrued interest on our Senior Notes.

## **Item 4. Controls and Procedures**

### **Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosures. Because of inherent limitations, our disclosure controls and procedures, no matter how well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of such disclosure controls and procedures are met.

Under the supervision and with the participation of our management, including our Executive Vice President – Chief Legal Counsel (performing the functions of our principal executive officer) and our Executive Vice President – Chief Financial Officer (our principal financial officer), we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. Based on this evaluation, our Executive Vice President – Chief Legal Counsel and our Executive Vice President – Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Quarterly Report.

### **Changes in Internal Control over Financial Reporting**

There have been no changes in our internal control over financial reporting during the first six months of fiscal 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **ITEM 1. Legal Proceedings**

On September 16, 2008, a putative class action lawsuit, captioned “Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants,” was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys’ fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned “Benjamin et al. v. NextWave Wireless Inc. et al.” was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint. On April 30, 2010, NextWave filed a Motion to Dismiss the Second Amended Complaint and the Motion now has been fully briefed and is under submission to the court. At this time, there can be no assurance as to the ultimate outcome of this litigation.

We are also currently involved in other legal proceedings in the ordinary course of our business operations. We estimate the range of liability related to pending litigation where the amount and range of loss can be estimated. We record our best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, we record the



minimum estimated liability related to the claim. As additional information becomes available, we assess the potential liability related to our pending litigation and revise our estimates. As of July 3, 2010, other than the matters described above, we have not recorded any significant accruals for contingent liabilities associated with our legal proceedings based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time. Revisions to our estimate of the potential liability could materially impact future results of operations.

## ITEM 1A. Risk Factors

Our business involves a high degree of risk. You should carefully consider the following risks together with all of the other information contained in this Quarterly Report and our Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 2, 2010, before making a future investment decision with respect to our securities. If any of the following risks actually occurs, our business, financial condition and results of operations could be materially adversely affected, and the value of our securities could decline.

### Risks Relating to Our Business

***We have substantial debt maturities in 2011 and our cash reserves and cash generated from operations will not be sufficient to meet these payment obligations. There can be no assurance that asset sales or any additional financing will be achievable on acceptable terms and any failure to pay our debt at maturity will impair our ability to continue as a going concern.***

Our Senior Notes, having an aggregate principal amount of \$210.3 million at July 3, 2010, will mature in July 2011 and our Second Lien Notes, having an aggregate principal amount of \$155.1 million at July 3, 2010, will mature in November 2011. In addition, our Third Lien Notes, having an aggregate principal amount of \$564.9 million at July 3, 2010, will mature in December 2011. At July 3, 2010, the aggregate remaining outstanding principal balances of our Senior, Second and Third Lien Notes bear payment-in-kind interest at rates of 15.0%, 15.0% and 12.0%, respectively, which will increase the principal amount of this debt upon retirement. Our current cash reserves and cash generated from operations will not be sufficient to meet these payment obligations at maturity. We must consummate sales of our wireless spectrum assets yielding proceeds that are sufficient to retire this indebtedness. If we are unable to pay our debt at maturity, the holders of our notes could proceed against the assets pledged to secure these obligations, which include our spectrum assets and the capital stock of our material subsidiaries, which would impair our ability to continue as a going concern. Insufficient capital to repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing in the United States Bankruptcy Court. Our financial statements do not include any adjustments related to the recovery of assets and classification of liabilities that might be necessary should we be unable to continue as a going concern.

***Our capital structure requires that we successfully monetize a substantial portion of our wireless spectrum assets for net proceeds substantially in excess of our cost basis in order to retire our debt. The value of our equity securities is dependent on our ability to successfully retire our debt.***

We are required to use the net proceeds of asset sales to retire our debt and expect that we will be required to successfully monetize a substantial portion of our wireless spectrum assets for net proceeds substantially in excess of our cost basis in order to retire our debt. There is no guarantee that we will be able to find third parties interested in purchasing our wireless spectrum assets at prices sufficient to retire this debt prior to maturity. We may seek to refinance all or a portion of our debt prior to maturity but there can be no assurance that any such refinancing transaction will be available. The sale price of our wireless spectrum assets will be impacted by, among other things:

- the FCC's new technical rules relating to the operation of satellite digital audio radio services and services using our WCS spectrum licenses;
- the timing and allocated costs of build-out or substantial service requirements attached to our domestic and international spectrum licenses, where a failure to comply with these requirements could result in license forfeiture;

- timing of closure of potential sales, particularly if it is necessary to accelerate the planned sale of certain of our spectrum licenses in order to meet debt payment obligations;

- worldwide economic conditions which we believe have adversely affected manufacturers of telecommunications equipment and technology and led to a delay in global network deployments;
- availability of wireless spectrum in the United States in particular, which could be affected by potential government auctions of spectrum not previously available in the market; and
- availability of capital for prospective spectrum bidders which has been negatively impacted by the downturn in the credit and financial markets.

If we are unable to consummate sales of our wireless spectrum assets that are sufficient to retire our indebtedness, the holders of our notes could proceed against the assets pledged to secure these obligations, which include our spectrum assets and the capital stock of our material subsidiaries, which would impair our ability to continue as a going concern and the value of our equity securities would be impaired or eliminated.

***We are highly leveraged and our operating flexibility will be significantly reduced by our debt covenants.***

As of July 3, 2010, the aggregate principal amount of our secured indebtedness was \$930.3 million. This amount includes our Senior Notes with an aggregate principal amount of \$210.3 million, our Second Lien Notes with an aggregate principal amount of \$155.1 million and our Third Lien Notes with an aggregate principal amount of \$564.9 million. Covenants in the purchase agreements for our Senior Notes and Second Lien Notes impose operating and financial restrictions on us. These restrictions prohibit or limit our ability, and the ability of our subsidiaries, to, among other things:

- pay dividends to our stockholders;
- incur, or cause to incur, additional indebtedness or incur liens;
- sell assets for consideration other than cash;
- consolidate or merge with or into other companies;
- issue shares of our common stock or securities of our subsidiaries;
- make capital expenditures or other strategic investments in our business not contemplated by our operating budget; or
- acquire assets or make investments.

We anticipate that our overall level of indebtedness and covenant restrictions will:

- limit our ability to pursue business opportunities;
- limit our flexibility in planning for, or reacting to, changes in the markets in which we compete;
- place us at a competitive disadvantage relative to our competitors with less indebtedness;
- render us more vulnerable to general adverse economic, regulatory and industry conditions; and
- require us to dedicate proceeds from asset sales to service our debt.

A breach of any covenants contained in the note purchase agreements governing our secured notes could result in a default under our indebtedness. If we are unable to repay or refinance those amounts, the holders of our notes could proceed against the assets pledged to secure these obligations, which include our spectrum assets and substantially all of our other assets.

***The terms of our Senior Notes and Second Lien Notes require us to certify our compliance with a restrictive operating budget and to maintain a minimum cash balance. A failure to comply with these terms may result in an event of default which could result in the acceleration of maturity of our indebtedness and impair our ability to continue as a going concern.***

The terms of our Senior Notes and Second Lien Notes require us to deliver a six-month operating budget to the noteholders on a quarterly basis, which budget is reasonably acceptable to Avenue AIV US, L.P., an affiliate of Avenue Capital Management II, L.P. (“Avenue Capital”). Avenue Capital holds 78% of the aggregate principal amount of our Second Lien Notes and 56% of the aggregate principal amount of our

Senior Notes. We must deliver monthly certifications relating to our cash balances to the holders of our Senior Notes and Second Lien Notes. If we are unable to certify that our cash balances have not deviated in a negative manner by more than 10% from budgeted balances, default interest will accrue and, if such condition persists for three monthly reporting periods an event of default would occur under our Senior Notes, Second Lien Notes, and, if the maturity of the foregoing indebtedness were to be accelerated, an event of default would occur under our Third Lien Notes. In addition, we must certify that we have maintained a minimum cash balance of \$1.0 million, and any failure to maintain such minimum cash balance will result in an immediate event of default under our Senior Notes, Second lien Notes, and, if the maturity of the foregoing indebtedness were to be accelerated, our Third Lien Notes. Upon an acceleration of our debt following an event of default, the holders of our notes could proceed against the assets pledged to secure these obligations, which include our spectrum assets and the capital stock of our material subsidiaries, which would impair our ability to continue as a going concern.

***Our restructuring and cost reduction activities expose us to contingent liabilities, accounting charges, and other risks.***

We have realized significant operating losses during each reporting period since our inception in 2005, with the exception of the first quarter of 2010 due to a gain resulting from the accounting treatment of the maturity extension of our Third Lien Notes. We expect to realize further operating losses in the future. In an effort to reduce our working capital requirements, in the third quarter of 2008, we commenced the implementation of a global restructuring initiative, pursuant to which we have divested, either through sale, dissolution or closure, our operating business segments. We have also taken other cost reduction actions. During the first six months of 2010, we incurred aggregate restructuring costs of \$1.0 million, the majority of which are contract termination costs related to our discontinued Semiconductor business.

Our restructuring activities and cost reduction efforts are subject to risks including the effect of accounting charges which may be incurred, expenses of employee severance or contract terminations or defaults, or legal claims by employees or creditors. In addition, we may face difficulty in retaining critical employees, customers or suppliers who may believe that a continued relationship with us is of greater risk due to our restructuring activities. If we cannot successfully complete our restructuring efforts, our expenses will continue to exceed our revenue and available funding resources and we will not be able to continue as a going concern and could potentially be forced to seek relief through a filing under the United States Bankruptcy Code.

***We have become and may continue to be the target of securities class action suits and derivative suits which could result in substantial costs and divert management attention and resources.***

Securities class action suits and derivative suits are often brought against companies following periods of volatility in the market price of their securities. Defending against these suits can result in substantial costs to us and divert the attention of our management.

On September 16, 2008, a putative class action lawsuit, captioned “Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants,” was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys’ fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned “Benjamin et al. v. NextWave Wireless Inc. et al.” was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint. On April 30, 2010, NextWave filed a Motion to Dismiss the Second Amended Complaint and the Motion now has been fully briefed and is under submission to the court. At this time, there can be no assurance as to the ultimate outcome of this litigation.



***Effective as of July 23, 2010, our common stock is no longer traded on The Nasdaq Global Market (“Nasdaq”) and investors no longer have the benefit of certain exemptions from state securities laws governing resales, liquidity benefits and governance protections afforded by a Nasdaq listing.***

As a result of our delisting from Nasdaq, we are not currently subject to its corporate governance requirements and you may not have the same protections as are afforded to stockholders of companies listed on the Nasdaq. For example, we are no longer required to maintain a majority of independent directors on our Board of Directors. Delisting from the Nasdaq may also result in increased obligations under state securities laws and decreased coverage by security analysts.

Markets operated by the Pink OTC Markets are generally regarded as less efficient and liquid than Nasdaq. The ability to trade our common stock on the OTCQB depends on the presence and investment decisions of willing buyers and sellers. Accordingly, if an active and liquid trading market price for our common stock does not develop or, if developed, does not continue, the market price of our common stock will be adversely affected. In addition, because we are no longer listed on Nasdaq, sales of our common stock by brokers in certain states may be limited or prohibited pending completion of registration filings required under state securities laws.

Trading in our common stock may be subject to the requirements of certain rules promulgated by the SEC under the Securities Exchange Act of 1934, which require additional disclosure by broker-dealers in connections with any trade involving a stock defined as a “penny stock”. A “penny stock” is any equity security that has a market price per share of less than \$5.00, subject to certain exceptions, such as any securities listed on a national securities exchange. Additional disclosure burdens relating to penny stocks imposed upon broker-dealers by the SEC requirements could discourage broker-dealers from facilitating trades in our common stock, which could limit the market liquidity of the stock and the ability of investors to trade our common stock.

#### **Special Risk Considerations Relating to our Pending Sale of our Remaining Interest in PacketVideo Corporation to NTT DOCOMO, Inc.**

***If we fail to complete the sale, our business may be harmed and our ability to sell our interest in PacketVideo may be impaired.***

We cannot assure you that the sale of our equity interest in PacketVideo will be completed. The completion of the sale is subject to the satisfaction of a number of conditions, including, among others, the requirement that we obtain stockholder approval of the related stock purchase agreement. We cannot guarantee that we will be able to meet all of these closing conditions. If we are unable to meet all of the closing conditions, DOCOMO is not obligated to purchase our equity interest in PacketVideo. If the stock purchase agreement is not approved or does not close, our Board of Directors will be forced to evaluate other alternatives, which may be less favorable to us than the proposed sale.

If the sale of the PacketVideo shares to DOCOMO is not completed, we will be subject to a number of risks, including (i) the possible failure of the Company to obtain access to sufficient cash to service its debt, including its senior secured indebtedness, and to obtain working capital to pay its operational expenses and continue as a going concern; (ii) the possible loss of key employees and management personnel; (iii) the accrual of legal, accounting and other fees and costs incurred in connection with the transaction, all of which must be paid even if the transaction is not completed; and (iv) the risk of disruption of our business.

In addition, if the sale of the PacketVideo shares to DOCOMO is not completed, it may be very difficult for us to sell our remaining interest in PacketVideo to a third party because our stockholders’



agreement with DOCOMO will continue in effect and we will need to comply with the pre-emptive rights, rights of first negotiation, rights of first refusal and other rights that may adversely impact our ability to complete such a transaction or obtain fair value for our interest in PacketVideo.

In addition, if the sale of the PacketVideo shares to DOCOMO is not consummated, our directors, executive officers and other employees will have expended extensive time and effort and will have experienced significant distractions from their work during the pendency of the transaction, and we will have incurred significant out-of-pocket transaction costs, in each case without any commensurate benefit, which may have a material and adverse effect on our stock price and results of operations.

***Most of the proceeds from the sale will be applied to pay down our First Lien Notes and no proceeds from the sale will be distributed to our stockholders.***

We expect to receive approximately \$107.0 million of net proceeds from the sale, after deduction of estimated expenses for the transaction, of which we expect to apply approximately \$94.5 million to retire principal and accrued interest of our Senior Notes pursuant to our secured note agreements, and we expect to retain approximately \$12.5 million to fund our working capital needs. The proceeds from the sale of the PacketVideo shares to DOCOMO will not be distributed to our stockholders.

***The stock purchase agreement may expose us to contingent liabilities.***

Under the stock purchase agreement, we agreed to indemnify DOCOMO, jointly and severally with NextWave Broadband, for losses arising out of any inaccuracy or breach of any representation or warranty of the Company, NextWave Broadband or PacketVideo or any breach of any covenant or agreement by the Company, NextWave Broadband or PacketVideo, subject to certain limitations. Significant indemnification claims by DOCOMO could have a material adverse effect on our financial condition. In the event that claims for indemnification for such losses exceed the \$0.2 million threshold, we may be obligated to indemnify DOCOMO for up to \$8.0 million of such losses, unless the claim for indemnification is based upon, arising out of or relating to any matter constituting fraud, in which case there is no limit.

***After the sale, if completed, we will no longer have any significant operating revenues.***

Given our previous divestiture and/or discontinuation of operations of our network infrastructure subsidiaries, all of our significant operating revenues are currently generated by PacketVideo. After the sale of the PacketVideo shares to DOCOMO, we will no longer have any significant operating revenues and, if we are not able to successfully manage, operate or sell our wireless spectrum assets to generate cash flow, we may not be able to comply with our debt covenant and may not be able to continue as going concern.

***We will be a very small public company without any significant operating revenues.***

Once the sale of the PacketVideo shares to DOCOMO is completed, the Company will remain a publicly traded company and will continue to be subject to SEC rules and regulations, including the Sarbanes-Oxley Act of 2002. While all public companies face the costs and burdens associated with being publicly traded, given the small size of our company and the lack of significant operating revenues, these costs and burdens will be particularly significant to us.

## **Risks Relating to Government Regulation**

***If we do not comply with build-out requirements relating to our domestic spectrum licenses, such licenses could be subject to forfeiture.***



Certain “build-out” or “substantial service” requirements apply to our licensed wireless spectrum, which generally must be satisfied as a condition of license renewal. In particular, the renewal deadline and the substantial service build-out deadline for our domestic BRS and EBS spectrum is May 1, 2011; for our domestic WCS spectrum the Federal Communications Commission (“FCC”) adopted new rules, purporting to supersede the July 21, 2010 build-out deadline, establishing two substantial service deadlines of 42 months and 72 months after the effective date of the rules (anticipated to be September 1, 2010); and for our domestic AWS spectrum, the substantial service build-out deadline is December 18, 2021. Failure to make the substantial service demonstration domestically, without seeking and obtaining an extension from the FCC, would result in license forfeiture.

The substantial service deadline for our domestic WCS spectrum was July 21, 2010 under the FCC rules effective at that time. However, the FCC adopted new rules on May 20, 2010, that, when effective (anticipated to be September 1, 2010), purported to replace the July 21, 2010 substantial service requirement with new requirements that must be met 42 and 72 months after the date that new WCS technical and service rules become effective. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC has announced that it intends to grant all pending WCS license renewal applications, including those that we filed in April of 2007. However, the grant of these applications is conditioned on the outcome of an ongoing FCC rulemaking proceeding regarding wireless license renewal procedures. While we believe we have made the capital expenditures required to complete the applicable WCS build-out requirements, we may be required to make additional capital expenditures to comply with the new rules if the FCC does not accept our substantial service showings under the rules in effect on July 20, 2010. There can be no assurance of how the FCC will ultimately treat the WCS license renewal applications.

The substantial service deadline for Educational Broadband Service and Broadband Radio Service (“EBS/BRS”) spectrum is May 1, 2011; however, most of our EBS leases require us to complete most build out activities in 2010, in advance of the FCC’s substantial service deadline. Failure to meet our service requirements could result in forfeiture of the applicable licenses.

With respect to our domestic BRS spectrum, we plan to construct a commercial system using the spectrum to meet the FCC substantial service requirement. If we are unable to complete the construction of the system so that we can provide the service by the substantial service deadline, the affected license(s) would be subject to non-renewal for failure to make the substantial service showing to the FCC by the deadline.

With respect to our domestic EBS spectrum, at this time we do not plan to construct or to partner with a third party to construct a commercial system using the spectrum to meet the FCC substantial service requirement. Instead, we have arranged with our EBS licensees to either (a) have the EBS licensee continue to use the spectrum to provide educational services in the cases where the EBS licensee is currently providing such service or (b) provide educational services on a network that will be installed by us, at our cost, either of which option is intended to deliver educational services over the spectrum in compliance with the FCC’s educational safe harbor to meet the substantial service showing by the deadline. Our reliance on the EBS licensees to provide the educational service may subject us to risk of non-renewal in the event the EBS licensee fails to provide the service. In addition, if we are unable to complete the construction of the system so that the EBS licensee can provide the service by the substantial service deadline, the affected license(s) would be subject to non-renewal for failure to make the substantial service showing to the FCC by the deadline.

The FCC’s rules for meeting the substantial service requirements are written generally so as to enable flexibility in providing service. However, because the rules are subject to interpretation, the FCC has discretion in determining if the substantial service showing is adequate to meet the rules and there is a risk that the FCC may not approve the substantial service showing and any of our licenses that did not meet the substantial service requirement would then be subject to non-renewal.

***If we do not comply with build-out requirements relating to our international spectrum licenses, such licenses could be subject to forfeiture.***

We operate or hold spectrum licenses through various subsidiaries and joint ventures in Argentina, Canada, Norway and Switzerland.

Owning and operating wireless spectrum licenses in overseas jurisdictions may be subject to a changing regulatory environment. In particular, our ownership of wireless broadband spectrum in Argentina remains subject to obtaining governmental approval. We cannot assure you that changes in foreign regulatory guidelines for the issuance or use of wireless licenses, foreign ownership of spectrum licenses, the adoption of wireless standards or the enforcement and licensing of intellectual property rights will not adversely impact our operating results.

We also have certain build-out requirements internationally, and failure to make those service demonstrations could also result in license forfeiture. For example, in Canada, our 2.3 GHz licenses are subject to mid-term in-use demonstration requirements in November of 2012 and in April of 2013. In addition, in Switzerland our 3.5 GHz licenses are subject to service requirements in September 2010. At this time our ability to make required service demonstrations in Switzerland is not assured.

***Our use of EBS spectrum is subject to privately negotiated lease agreements. Changes in FCC Rules governing such lease agreements, contractual disputes with EBS licensees, or failures by EBS licensees to comply with FCC Rules could impact our use of the spectrum.***

With few exceptions, commercial enterprises are restricted from holding licenses for EBS spectrum. Eligibility for EBS spectrum is limited to accredited educational institutions, governmental organizations engaged in the formal education of enrolled students (e.g., school districts), and nonprofit organizations whose purposes are educational. Access to EBS spectrum can only be gained by commercial enterprises through privately-negotiated EBS lease agreements. FCC regulation of EBS leases, private interpretation of EBS lease terms, private contractual disputes, and failure of an EBS licensee to comply with FCC regulations all could impact our use of EBS spectrum and the value of our leased EBS spectrum. The FCC Rules permit EBS licensees to enter into lease agreements with a maximum term of 30 years; lease agreements with terms longer than 15 years must contain a right of review<sup>7</sup> by the EBS licensee every five years beginning in year 15. The right of review must afford the EBS licensee with an opportunity to review its educational use requirements in light of changes in educational needs, technology, and other relevant factors and to obtain access to such additional services, capacity, support, and/or equipment as the parties shall agree upon in the spectrum leasing arrangement to advance the EBS licensee's educational mission. A spectrum leasing arrangement may include any mutually agreeable terms designed to accommodate changes in the EBS licensee's educational use requirements and the commercial lessee's wireless broadband operations. In addition, the terms of EBS lease agreements are subject to contract interpretation and disputes could arise with EBS licensees. There can be no assurance that EBS leases will continue for the full lease term, or be extended beyond the current term, or be renewed or extended on terms that are satisfactory to us. Similarly, since we are not eligible to hold EBS licenses, we must rely on EBS licensees with whom we contract to comply with FCC Rules. The failure of an EBS licensee from whom we lease spectrum to comply with the terms of their FCC authorization or FCC Rules could result in termination, forfeiture or non-renewal of their authorization, which would negatively impact the amount of spectrum available for our use.

***We have no guarantee that the licenses we hold or lease will be renewed.***

The FCC generally grants wireless licenses for terms of ten or 15 years, which are subject to renewal and revocation. FCC Rules require all wireless licensees to comply with applicable FCC Rules and policies and the Communications Act of 1934, as amended (the "Communications Act"), in order to retain their licenses. For example, licensees must meet certain construction requirements, including making substantial service demonstrations, in order to retain and renew FCC licenses. Failure to comply with FCC requirements with respect to any license could result in revocation or non-renewal of a license. In general, most wireless licensees who meet their construction and/or substantial service requirements are afforded renewal expectancy; however, all FCC license renewals can be challenged in various ways, regardless of whether such challenges have any legal merit. Under FCC Rules, licenses continue in effect during the pendency of timely filed renewal applications. Challenges to license renewals, while uncommon, may impact the timing of renewal grants and may impose legal costs. Accordingly, there is no guarantee that licenses we hold or lease will remain in full force and effect or be renewed.

We hold 30 licenses issued by the FCC for WCS spectrum. Renewal applications for all 2.3 GHz WCS licenses, including those issued to us, were due to be filed with the FCC on July 21, 2007. We filed our WCS renewal applications on April 23, 2007. Under FCC Rules, licenses continue in effect during the pendency of timely file renewal applications. At least three parties about which we are aware made filings purporting to be "competing applications" in response to the renewal applications we, AT&T, and perhaps others filed. The basis on which the third-party filings were made was the alleged failure of WCS licensees to deploy service on WCS spectrum and satisfy substantial service requirements by July 21, 2007. However, on December 1, 2006, the FCC issued a waiver order extending the substantial service deadline for WCS licensees to July 21, 2010. The FCC's rules contain no procedures for

processing “competing applications” filed for WCS spectrum and the FCC has not accepted them for filing. The FCC has announced that it intends to grant all pending WCS license renewal applications, including those that we filed in April of 2007. However, the grant of these applications is conditioned on the outcome of an ongoing FCC rulemaking proceeding regarding wireless license renewal procedures in which the FCC has

proposed to dismiss all pending “competing applications”. There can be no assurance of how the FCC will ultimately treat the “competing applications” or the WCS license renewal applications.

***Interference could negatively impact our use of wireless spectrum we hold, lease or use.***

Under applicable FCC and equivalent international rules, users of wireless spectrum must comply with technical rules that are intended to eliminate or diminish harmful radiofrequency interference between wireless users. Licensed spectrum is generally entitled to interference protection, subject to technical rules applicable to the radio service, while unlicensed spectrum has no interference protection rights and must accept interference caused by other users.

***Wireless devices utilizing WCS, BRS and EBS spectrum may be susceptible to interference from Satellite Digital Audio Radio Services (“SDARS”).***

Since 1997, the FCC has considered a proposal to permanently authorize terrestrial repeaters for SDARS operations adjacent to the C and D blocks of the WCS band. The FCC has permitted a large number of these SDARS terrestrial repeaters to operate on a special temporary authorization since 2001. Permanently authorizing SDARS repeaters adjacent to the WCS band could cause interference to WCS, BRS and EBS receivers. The extent of the interference from SDARS repeaters is unclear and will depend on the effectiveness of the new rules adopted by the FCC on May 20, 2010 (as further described below) and the operation of SDARS equipment under the new rules. Because WCS C and D block licenses are adjacent to the SDARS spectrum, the potential for interference to this spectrum is of greatest concern. There is a lesser magnitude concern regarding interference from SDARS to WCS A and B block licenses, and BRS and EBS licenses. The FCC adopted new technical rules on May 20, 2010 to govern WCS and SDARS operations. These rules are anticipated to go into effect on September 1, 2010. Operation of both WCS and SDARS equipment under the new rules could result in interference to our WCS, BRS or EBS spectrum, which could impair our ability to realize value from this spectrum.

***Increasing regulation of the tower industry may make it difficult to deploy new towers and antenna facilities which could adversely affect the value of certain of our wireless spectrum assets.***

The FCC, together with the Federal Aviation Administration (“FAA”), regulates tower marking and lighting. In addition, tower construction and deployment of antenna facilities is impacted by federal, state and local statutes addressing zoning, environmental protection and historic preservation.

The FCC adopted significant changes to its rules governing historic preservation review of new tower projects, which makes it more difficult and expensive to deploy towers and antenna facilities. The FCC also is considering changes to its rules regarding when routine environmental evaluations will be required to determine compliance of antenna facilities with its radiofrequency radiation exposure limits. If adopted, these regulations could make it more difficult to deploy facilities. In addition, the FAA has proposed modifications to its rules that would impose certain notification requirements upon entities seeking to (i) construct or modify any tower or transmitting structure located within certain proximity parameters of any airport or heliport, and/or (ii) construct or modify transmission facilities using the 2500-2700 MHz radiofrequency band, which encompasses virtually all of the BRS/EBS frequency band. If adopted, these requirements could impose new administrative burdens upon use of BRS/EBS spectrum.

## **ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

## **ITEM 3. Default Upon Senior Securities**

None.

**ITEM 4. Removed and reserved**

**ITEM 5. Other Information**

## ITEM 6. Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of NextWave Wireless Inc. (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K of NextWave Wireless Inc. filed June 18, 2010)
4.1	First Lien Senior Incremental Notes Agreement, dated May 27, 2010, among NextWave Wireless Inc., NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc. and WCS Wireless License Subsidiary, LLC, and the note purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K of NextWave Wireless Inc. filed June 3, 2010)
31.1	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for Frank Cassou.
31.2	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for Francis J. Harding.
32.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for Frank Cassou.
32.2	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for Francis J. Harding.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

August 9, 2010

\_\_\_\_\_  
(Date)

**NEXTWAVE WIRELESS INC.** (Registrant)

By: /s/ Francis J. Harding

\_\_\_\_\_  
Francis J. Harding

Executive Vice President and

Chief Financial Officer

## Index to Exhibits

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## CERTIFICATION

I, Frank Cassou certify that:

1. I have reviewed this quarterly report on Form 10-Q of NextWave Wireless Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's Board of Directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 9, 2010

/s/ Frank Cassou  
Frank Cassou  
Executive Vice President and Chief Legal Counsel  
(Principal Executive Officer)

## CERTIFICATION

I, Francis J. Harding, certify that:

1. I have reviewed this quarterly report on Form 10-Q of NextWave Wireless Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's Board of Directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 9, 2010

/s/ Francis J. Harding \_\_\_\_\_

Francis J. Harding  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of NextWave Wireless Inc. (the "Company") on Form 10-Q ("Form 10-Q") for the period ended July 3, 2010, as filed with the Securities and Exchange Commission on the date hereof, I, Frank Cassou., Executive Vice President and Chief Legal Counsel of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Form 10-Q fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Frank Cassou \_\_\_\_\_

Frank Cassou

Executive Vice President and Chief Legal Counsel

August 9, 2010

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of NextWave Wireless Inc. (the "Company") on Form 10-Q ("Form 10-Q") for the period ended July 3, 2010, as filed with the Securities and Exchange Commission on the date hereof, I, Francis J. Harding, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Form 10-Q fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Francis J. Harding\_\_\_\_\_

Francis J. Harding  
Executive Vice President and Chief Financial Officer

August 9, 2010