

LEAP WIRELESS INTERNATIONAL INC

Form 424B3

December 15, 2010

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**This filing is made pursuant to Rule 424(b)(3) under the Securities Act of 1993 in connection with Registration No. 333-170976**

**PROSPECTUS**

**Cricket Communications, Inc.**

**Offer to exchange its 7.75% Senior Notes due 2020, which have been registered under the Securities Act of 1933, for any and all of its outstanding 7.75% Senior Notes due 2020**

**The exchange offer and withdrawal rights will expire at 5:00 p.m., New York City time, on January 14, 2011, unless extended.**

We are offering to exchange up to \$1,200,000,000 aggregate principal amount of our new 7.75% Senior Notes due 2020, which have been registered under the Securities Act of 1933, as amended, or the Securities Act, referred to in this prospectus as the new notes, for any and all of our outstanding unregistered 7.75% Senior Notes due 2020, referred to in this prospectus as the old notes. We issued the old notes on November 19, 2010 in a transaction not requiring registration under the Securities Act. We are offering you new notes, with terms substantially identical to those of the old notes, in exchange for old notes in order to satisfy our registration obligations from that previous transaction. The new notes and the old notes are collectively referred to in this prospectus as the notes.

**See Risk Factors starting on page 19 of this prospectus for a discussion of risks associated with investing in the new notes and with the exchange of old notes for the new notes offered hereby.**

We will exchange new notes for all old notes that are validly tendered and not withdrawn before expiration of the exchange offer. You may withdraw tenders of old notes at any time prior to the expiration of the exchange offer. The exchange procedure is more fully described in The Exchange Offer Procedures for Tendering. If you fail to tender your old notes, you will continue to hold unregistered notes that you will not be able to transfer freely.

The terms of the new notes are identical in all material respects to those of the old notes, except that the transfer restrictions and registration rights applicable to the old notes do not apply to the new notes. See Description of New Notes for more details on the terms of the new notes. We will not receive any proceeds from the exchange offer.

There is no established trading market for the new notes or the old notes. The exchange of old notes for new notes in the exchange offer will not be a taxable transaction for United States federal income tax purposes. See Certain U.S. Federal Income Tax Considerations. All broker-dealers must comply with the registration and prospectus delivery requirements of the Securities Act. See Plan of Distribution.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense. We are not asking you for a proxy and you are requested not to send us a proxy.**

**The date of this prospectus is December 15, 2010**



Each broker-dealer that receives new notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such new notes. The letter of transmittal delivered with this prospectus states that by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of new notes received in exchange for outstanding old notes where such outstanding notes were acquired by such broker-dealer as a result of market-making activities or other trading activities. We have agreed that, starting on the expiration date of the exchange offer and ending on the close of business one year after such expiration date, we will make this prospectus available to any broker-dealer for use in connection with any such resale. See Plan of Distribution.

**We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus as if we had authorized it. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities other than the registered securities to which it relates, nor does this prospectus constitute an offer to sell or a solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction.**

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**About this Prospectus**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC. We may add, update or change in a prospectus supplement any information contained in this prospectus. You should read this prospectus and any accompanying prospectus supplement, as well as any post-effective amendments to the registration statement of which this prospectus is a part, together with the additional information described under **Where You Can Find More Information** and **Incorporation of Certain Documents by Reference** before you make any investment decision.

You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information different from that contained in this prospectus. We are offering to exchange old notes for new notes only in jurisdictions where such offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any actual exchange of old notes for new notes.

**WHERE YOU CAN FIND MORE INFORMATION**

We have filed with the SEC a registration statement on Form S-4 under the Securities Act with respect to the new notes offered hereby. This prospectus, which is a part of the registration statement, does not contain all of the information set forth in the registration statement, as amended, or the exhibits and schedules filed therewith. For further information with respect to us and the new notes offered hereby, please see the registration statement, as amended, and the exhibits and schedules filed with the registration statement. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. A copy of the registration statement, as amended, and the exhibits and schedules filed with the registration statement may be inspected without charge at the public reference room maintained by the SEC, located at 100 F Street, NE, Washington, D.C. 20549, and copies of all or any part of the registration statement may be obtained from such offices upon the payment of the fees prescribed by the SEC. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. The SEC also maintains an internet website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the website is [www.sec.gov](http://www.sec.gov).

We are subject to the information and periodic reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and, in accordance therewith, we file annual, quarterly and periodic reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information are available for inspection and copying at the public reference room and website of the SEC referred to above. We maintain a website at [www.leapwireless.com](http://www.leapwireless.com). You may access our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed with or furnished to the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act free of charge at our website as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC. The reference to our web address does not constitute incorporation by reference of the information contained at such site.

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

This prospectus incorporates important business and financial information about us that is not included in or delivered with this prospectus. The information incorporated by reference is considered to be part of this prospectus, except for any information superseded by information that we file later with the SEC. This prospectus incorporates by reference the documents set forth below that have previously been filed with the SEC:

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our Annual Report on Form 10-K for the year ended December 31, 2009 filed with the SEC on March 1, 2010 (including portions of our Definitive Proxy Statement on Schedule 14A filed with the SEC on April 26, 2010 incorporated by reference therein);

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our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2010, June 30, 2010 and September 30, 2010 filed with the SEC on May 10, 2010, August 6, 2010 and November 3, 2010, respectively; and

our Current Reports on Form 8-K filed with the SEC on February 23, 2010, March 10, 2010, May 25, 2010, July 2, 2010, August 3, 2010, September 14, 2010, September 23, 2010, November 4, 2010, November 8, 2010, November 19, 2010 and December 3, 2010.

We are also incorporating by reference additional documents that we file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus. We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed filed with the SEC, including our compensation committee report and performance graph or any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or certain exhibits furnished pursuant to Item 9.01 of Form 8-K.

We will provide at no cost to each person, including any beneficial owner, to whom this prospectus is delivered, upon oral or written request of such person, a copy of any or all of the reports or documents that have been incorporated by reference in this prospectus, but not delivered therewith. Requests for such copies should be directed to:

Leap Wireless International, Inc.  
Attn: Director of Investor Relations  
5887 Copley Drive  
San Diego, California 92111  
(858) 882-6000

These documents may also be accessed through our website at *www.leapwireless.com* or as described under the heading "Where You Can Find More Information" in this prospectus. The information contained in, or that can be accessed through, our website is not a part of this prospectus. Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference into this prospectus. **To obtain timely delivery of any copies of filings requested, please write or telephone no later than January 7, 2011, five business days prior to the expiration of the exchange offer.**

This exchange offer is not being made to, nor will we accept surrenders for exchange from, holders of outstanding old notes in any jurisdiction in which this exchange offer or the acceptance thereof would not be in compliance with the securities or blue sky laws of such jurisdiction.

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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Except for the historical information contained herein, this prospectus (including the documents incorporated by reference in this prospectus) contains forward-looking statements. Such statements reflect management's current forecast of certain aspects of our future. You can generally identify forward-looking statements by forward-looking words such as believe, think, may, could, will, estimate, continue, anticipate, intend, seek, plan, and similar expressions. Such statements are based on currently available operating, financial and competitive information and are subject to various risks, uncertainties and assumptions that could cause actual results to differ materially from those anticipated in or implied by our forward-looking statements. Such risks, uncertainties and assumptions include, among other things:

our ability to attract and retain customers in an extremely competitive marketplace;

the duration and severity of the current economic downturn in the United States and changes in economic conditions, including interest rates, consumer credit conditions, consumer debt levels, consumer confidence, unemployment rates, energy costs and other macro-economic factors that could adversely affect demand for the services we provide;

the impact of competitors' initiatives;

our ability to successfully implement product and service offerings, expand our retail distribution and execute effectively on our other strategic activities;

our ability to obtain and maintain roaming services from other carriers at cost-effective rates;

our ability to maintain effective internal control over financial reporting;

our ability to attract, motivate and retain an experienced workforce, including members of senior management;

our ability to comply with the covenants in any credit agreement, indenture or similar instrument governing any of our existing or future indebtedness;

our ability to integrate, manage and operate our new joint venture with Pocket Communications;

failure of our network or information technology systems to perform according to expectations and risks associated with the upgrade or transition of certain of those systems, including our customer billing system; and

other factors detailed in the section entitled "Risk Factors" commencing on page 19 of this prospectus.

All future written and oral forward-looking statements attributable to us or any persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained in this section or elsewhere in, or incorporated by reference into, this prospectus. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. Except as required by applicable law, we undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in, or incorporated by reference into, this prospectus may not occur and actual results could differ materially



from those anticipated or implied in the forward-looking statements. Accordingly, users of this prospectus are cautioned not to place undue reliance on the forward-looking statements.

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**SUMMARY**

*This summary highlights selected information included elsewhere in or incorporated by reference in this prospectus and does not contain all the information that you should consider before participating in the exchange offer. You should read the entire prospectus carefully, including the Risk Factors section and the financial statements and related notes and other information incorporated by reference, before deciding to participate in the exchange offer described in this prospectus. As used in this prospectus, the terms Leap, we, our, ours and us refer to Leap Wireless International, Inc., a Delaware corporation, and its subsidiaries, including Cricket Communications, Inc., a Delaware corporation and the issuer of the notes, or Cricket, unless the context suggests otherwise. Unless otherwise specified, information relating to population and potential customers, or POPs, is based on 2010 population estimates provided by Claritas Inc.*

**Overview of Our Business**

We are a wireless communications carrier that offers digital wireless services in the U.S. under the Cricket® brand. Our Cricket service offerings provide customers with unlimited wireless services for a flat rate without requiring a fixed-term contract or a credit check.

Cricket service is offered by Cricket, a wholly owned subsidiary of Leap. Cricket service is also offered in Oregon by our wholly owned subsidiary LCW Wireless Operations, LLC, or LCW Operations; in the upper Midwest by Denali Spectrum Operations, LLC, or Denali Operations; and, commencing October 1, 2010, in South Texas by STX Wireless Operations, LLC, or STX Operations. Cricket owns an indirect 82.5% non-controlling interest in Denali Operations through an 82.5% non-controlling interest in Denali Spectrum, LLC, or Denali. Denali was structured to qualify as a designated entity under Federal Communications Commission, or FCC, regulations. In September 2010, we entered into an agreement to purchase the remaining 17.5% controlling interest in Denali. In addition, in September 2010, Denali entered into an agreement to contribute all of its spectrum outside its Chicago and Southern Wisconsin operating markets and a related spectrum lease to a newly formed venture, in exchange for an 85% non-controlling interest. Cricket owns an indirect 75.75% controlling interest in STX Operations through a 75.75% interest in STX Wireless, LLC, or STX Wireless. STX Wireless is a joint venture created by Cricket and various entities doing business as Pocket Communications, or Pocket, to provide Cricket service in the South Texas region. See Recent Developments for more information about these transactions.

As of September 30, 2010, Cricket service was offered in 35 states and the District of Columbia and had approximately 5.1 million customers. As of September 30, 2010, we and Denali owned wireless licenses covering an aggregate of approximately 184.2 million POPs (adjusted to eliminate duplication from overlapping licenses). The combined network footprint in our operating markets covered approximately 94.2 million POPs as of September 30, 2010. The licenses we and Denali own provide 20 MHz of coverage and the opportunity to offer enhanced data services in almost all markets in which we currently operate, assuming Denali were to make available to us certain of its spectrum.

In addition to our Cricket network footprint, we have entered roaming relationships with other wireless carriers that enable us to offer customers purchasing our wireless services an extended, nationwide calling area covering approximately 283 million POPs. In August 2010, we entered into agreements which significantly expand our ability to provide nationwide voice and data services. We entered into a roaming agreement to provide our customers with nationwide data roaming services. In addition, we entered into a wholesale agreement with an affiliate of Sprint Nextel to permit us to offer Cricket wireless services outside of our current network footprint using Sprint's network. We believe that these new arrangements will enable us to offer enhanced products and service plans and to strengthen

and improve our distribution.

Our Cricket service offerings are based on providing unlimited wireless services to customers, and the value of unlimited wireless services is the foundation of our business. Our primary Cricket service is Cricket Wireless, which offers customers unlimited wireless voice and data services for a flat monthly rate. Our most popular Cricket Wireless rate plans include unlimited local and U.S. long distance service and unlimited text messaging. In addition to our Cricket Wireless voice and data services, we offer Cricket Broadband, our unlimited mobile broadband service, which allows customers to access the internet through their computers for one low, flat rate. We also offer

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Cricket PAYGo, a pay-as-you-go unlimited prepaid wireless service designed for customers who prefer the flexibility and control offered by traditional prepaid services but who are seeking greater value for their dollar. None of our services require customers to enter into long-term commitments or pass a credit check.

In August 2010, we revised certain features of a number of our Cricket service offerings. We introduced all-inclusive rate plans for all of our Cricket services in which we ceased separately charging customers for certain fees (such as activation, reactivation and regulatory fees) and telecommunications taxes. We also introduced new Cricket Broadband service plans, with prices that vary depending upon the targeted amount of data that a customer expects to use during the month. We eliminated the free month of service we previously provided to new customers of our Cricket Wireless and Cricket Broadband services that purchased a handset or modem and instead decreased the retail prices of many of our devices. We also eliminated certain late fees we previously charged to customers who reinstated their service after having failed to pay their monthly bill on time. Further, we introduced new smartphones and other handsets and devices beginning in August 2010 and revised features of our dealer compensation program to reduce some of their initial compensation and provide further incentive for them to retain customers. We believe that these new service plans, products and other changes will be attractive to customers and help improve our competitive positioning in the marketplace.

We believe that our business is scalable because we offer an attractive value proposition to our customers while utilizing a cost structure that is significantly lower than most of our competitors. As a result, over the past five years, we have pursued activities to significantly expand our business, both through the broadening of our product portfolio (including the introduction of our Cricket Broadband and Cricket PAYGo products) and distribution channels and the enhancement of network coverage and capacity in new and existing markets. In addition, as discussed above, we recently entered into a new wholesale agreement and nationwide data roaming agreement which we believe will enable us to offer enhanced products and service plans and to strengthen and improve our distribution. We also currently plan to deploy next-generation LTE network technology over the next few years. Other future business expansion activities could include the launch of new product and service offerings, the acquisition of additional spectrum through private transactions or FCC auctions, the build-out and launch of Cricket services in additional markets, entering into partnerships with others or the acquisition of other wireless communications companies or complementary businesses. We expect to continue to look for opportunities to optimize the value of our spectrum portfolio. Because some of the licenses that we and Denali hold include large regional areas covering both rural and metropolitan communities, we and Denali may seek to partner with others, sell some of this spectrum or pursue alternative products or services to utilize or benefit from the spectrum not otherwise used for Cricket service. We intend to be disciplined as we pursue any expansion efforts and to remain focused on our position as a low-cost leader in wireless telecommunications.

The telecommunications industry is very competitive. In general, we compete with national facilities-based wireless providers and their prepaid affiliates or brands, local and regional carriers, non-facilities-based mobile virtual network operators, or MVNOs, voice-over-internet-protocol service providers, traditional landline service providers and cable companies. The competitive pressures of the wireless telecommunications industry have continued to increase and have caused a number of our competitors to offer competitively priced unlimited prepaid and postpaid service offerings. These service offerings have presented additional strong competition in markets in which our offerings overlap, and the evolving competitive landscape has negatively impacted our financial and operating results since early 2009. Our ability to remain competitive will depend, in part, on our ability to anticipate and respond to various competitive factors and to keep our costs low. In August 2009 and March 2010, we revised a number of our Cricket Wireless service plans to provide additional features previously only available in our higher-priced plans, to eliminate certain fees we previously charged customers who changed their service plans and to include unlimited nationwide roaming and international long distance services. These changes, which were made in response to the competitive and economic environment, resulted in lower average monthly revenue per customer and increased costs. In August 2010 we introduced a number of new initiatives to respond to the evolving competitive landscape, including revising the

features of a number of our Cricket service offerings, entering into a new wholesale and nationwide roaming agreement and introducing new smartphones and other handsets and devices. We believe that these new initiatives will be attractive to customers, will help improve our competitive positioning in the marketplace and will lead to improved financial and operational performance over the longer term, including higher average monthly revenue per customer and lower customer turnover. These initiatives,

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however, are significant undertakings, and we expect to incur additional expense in the near term as we implement these changes. The extent to which these new initiatives impact our future financial and operating results will depend upon customer acceptance of our new product and service offerings.

### **Our Business Strategy**

Our business strategy is to (1) target fast-growing market segments, (2) maintain an industry-leading cost structure, (3) continue to develop and evolve our product and service offerings, (4) continue to build our brand awareness and improve the productivity of our distribution including through national mass-market retailers, and (5) continue to enhance our network coverage and capacity in our existing markets.

### **Recent Developments**

#### **Denali Buyout and Savary Island Venture**

On September 21, 2010, we entered into an agreement with Denali Spectrum Manager, LLC, or DSM, to acquire DSM's 17.5% controlling interest in Denali for up to approximately \$58 million in cash (depending on the timing of closing) and a five-year \$45.5 million promissory note. Interest on the outstanding principal balance of the note will accrue at compound annual rates ranging from approximately 5.0% to 8.3%. Cricket must make principal payments of \$8.5 million per year, with the remaining principal balance and all accrued interest payable at maturity. Cricket's obligations under the note will be secured on a first-lien basis by certain assets of Savary Island (see below). Upon the closing of the transaction, Denali and its subsidiaries will become wholly owned subsidiaries of Cricket.

In addition, on September 21, 2010, Denali entered into an agreement with Ring Island Wireless, LLC, or Ring Island, to contribute all of its spectrum outside its Chicago and Southern Wisconsin operating markets and a related spectrum lease to Savary Island Wireless, LLC, or Savary Island, a newly formed venture, in exchange for an 85% non-controlling interest. Ring Island will contribute \$5.1 million of cash to the Savary Island venture in exchange for a 15% controlling interest. Savary Island is a newly formed entity that has applied to the FCC to obtain this spectrum as a very small business designated entity under FCC regulations. In connection with Denali's contribution, Savary Island will assume \$211.6 million of the outstanding senior secured debt owed by Denali to Cricket, and Cricket will provide a senior secured working capital facility to Savary Island with initial availability of up to \$5.0 million. Denali will retain the spectrum and assets relating to its Chicago and Southern Wisconsin operating markets. At the closing, Savary Island will enter into a management services agreement with Cricket, pursuant to which Cricket will provide management and administrative services to Savary Island and its subsidiaries. Under the amended and restated limited liability company agreement of Savary Island that will be entered into by Denali and Ring Island at closing, based on current FCC requirements, Ring Island will have the right to put all of its membership interest in Savary Island to Cricket in mid-2012.

The closings of both transactions are subject to customary closing conditions, including the approval of the FCC, and the closing of Cricket's acquisition of DSM's controlling interest in Denali is subject to the immediately prior closing of the Savary Island transaction.

#### **STX Wireless Joint Venture**

On October 1, 2010, we and Pocket contributed substantially all of our respective wireless spectrum and operating assets in the South Texas region to a new joint venture, STX Wireless, with Cricket receiving a 75.75% controlling interest in the venture and Pocket receiving a 24.25% non-controlling interest. Immediately prior to the closing, we also purchased specified assets from Pocket for approximately \$38 million in cash, which assets were also contributed to the venture. The joint venture is controlled and managed by Cricket under the terms of the amended and restated

limited liability company agreement of STX Wireless, or the STX LLC Agreement.

The joint venture strengthens our presence and competitive positioning in the South Texas region. Commencing October 1, 2010, STX Wireless began providing Cricket wireless service to approximately

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700,000 customers, of which approximately 300,000 or more were contributed by Pocket. The combined network footprint of the joint venture covers 4.4 million POPs.

Under the STX LLC Agreement, Pocket has the right to put, and Cricket has the right to call, all of Pocket's membership interests in STX Wireless, which rights are generally exercisable on or after April 1, 2014. In addition, in the event of a change of control of Leap, Pocket would be obligated to sell to us all of its membership interests in STX Wireless. The purchase price for Pocket's membership interests would be equal to 24.45% of Leap's enterprise value-to-revenue multiple for the four most recently completed fiscal quarters multiplied by the total revenues of STX Wireless and its subsidiaries over that same period, payable in either cash, Leap common stock or a combination thereof, as determined by Cricket in its discretion (provided that, if permitted by Cricket's debt instruments, at least \$25 million of the purchase price must be paid in cash). We would have the right to deduct from or set off against the purchase price certain distributions made to, and obligations owed to us by, Pocket. Under the STX LLC Agreement, Cricket would be permitted to purchase Pocket's membership interests in STX Wireless over multiple closings in the event that the block of shares of Leap common stock issuable to Pocket at the closing of the purchase would be greater than 9.9% of the total number of shares of Leap common stock then issued and outstanding.

At the closing, STX Wireless entered into a loan and security agreement with Pocket pursuant to which, commencing in April 2012, STX Wireless agreed to make quarterly limited-recourse loans to Pocket out of excess cash in an aggregate principal amount not to exceed \$30 million, which loans are secured by Pocket's membership interests in STX Wireless. Such loans will bear interest at 8.0% per annum, compounded annually, and will mature on the earlier of the tenth anniversary of the closing date and the date on which Pocket ceases to hold any membership interests in STX Wireless. Cricket will have the right to set off all outstanding principal and interest under this loan facility against the payment of the purchase price for Pocket's membership interests in STX Wireless in the event of a put, call or mandatory buyout following a change of control of Leap.

## **Tender Offer and Redemption**

On November 4, 2010, we commenced a cash tender offer, or the Tender Offer, for any and all of the \$1.1 billion outstanding principal amount of our 9.375% senior notes due 2014, or the 9.375% Senior Notes. On November 19, 2010, we accepted tenders for \$915,828,000 in aggregate principal amount of outstanding 9.375% Senior Notes in connection with the early acceptance date of the Tender Offer. The holders of the accepted notes received total consideration of \$1,050.63 per \$1,000 principal amount of notes tendered, which included a \$20 consent payment per \$1,000 principal amount of notes tendered. The total cash payment to purchase the tendered 9.375% Senior Notes on the early acceptance date, including accrued and unpaid interest up to, but excluding, November 19, 2010, was approximately \$996.49 million, which we obtained from the closing of the private offering of the old notes. The Tender Offer expired at midnight, New York City time, on December 3, 2010. On November 19, 2010, we issued a notice of redemption to redeem any untendered 9.375% Senior Notes at a price of 104.688% of the principal amount thereof, plus accrued and unpaid interest to, but not including, the redemption date, in accordance with the indenture governing the 9.375% Senior Notes.

## **Corporate Information**

Leap was formed as a Delaware corporation in June 1998. Leap's shares began trading publicly in September 1998, and we launched our innovative Cricket service in March 1999. In April 2003, we filed voluntary petitions for relief under Chapter 11 in federal bankruptcy court. On August 16, 2004, our plan of reorganization became effective and we emerged from Chapter 11 bankruptcy. On that date, a new board of directors of Leap was appointed, Leap's previously existing stock, options and warrants were cancelled, and Leap issued 60 million shares of new Leap common stock to two classes of creditors. On June 29, 2005, Leap became listed for trading on the NASDAQ National Market (now known as the NASDAQ Global Market) under the symbol LEAP, and our common stock



currently trades on the NASDAQ Global Select Market, also under the symbol LEAP .

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Our principal executive offices are located at 5887 Copley Drive, San Diego, California 92111 and our telephone number at that address is (858) 882-6000. Our principal websites are located at [www.leapwireless.com](http://www.leapwireless.com) and [www.mycricket.com](http://www.mycricket.com). The information contained in, or that can be accessed through, our websites is not part of this prospectus.

Leap is a U.S. registered trademark and the Leap logo is a trademark of Leap. Cricket, Cricket Clicks, Flex Bucket, Jump, the Cricket stylized K and Real Unlimited. Unreal Savings are U.S. registered trademarks of Cricket. In addition, the following are trademarks or service marks of Cricket: BridgePay, Cricket Nation, Cricket PAYGo, MyPerks, Cricket MyPerks and Cricket Wireless Internet Service. All other trademarks are the property of their respective owners.

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**Organizational Structure**

The following chart represents our current corporate organizational structure. Prior to becoming wholly owned subsidiaries of Cricket, Denali and its subsidiaries will be neither guarantors of the notes nor in the Restricted Group nor Subsidiaries under the indenture governing the notes. LCW Wireless, STX Wireless and their respective subsidiaries will be in the Restricted Group and Subsidiaries under the indenture governing the notes, but will not guarantee the notes and will only be required to guarantee the notes in the future if they guarantee other indebtedness of Leap, Cricket or any other guarantor.

- (a) Guarantor of the notes and of Cricket's outstanding \$300 million in aggregate principal amount of 10.0% senior notes due 2015 and \$1.1 billion in aggregate principal amount of 7.75% senior secured notes due 2016, or the 7.75% Secured Notes. Leap also is the issuer of \$250 million of unsecured convertible senior notes due 2014.
- (b) LCW Wireless owns a 100% interest in LCW Operations, which, in turn, owns a 100% interest in LCW Wireless License, LLC. LCW Wireless and its subsidiaries became subsidiaries of Cricket in August 2010.
- (c) STX Wireless owns a 100% interest in STX Operations, which, in turn, owns a 100% interest in STX Wireless License, LLC. The remaining 24.25% non-controlling interest in STX Wireless is owned by Youghioghenny Communications, LLC. See Recent Developments STX Wireless Joint Venture above.
- (d) The remaining 17.5% controlling interest is owned by Denali Spectrum Manager, LLC. In September 2010, we entered into an agreement to purchase DSM's 17.5% controlling interest in Denali. In addition, in September 2010, Denali entered into an agreement to form a new venture to which Denali would contribute all of its spectrum outside its Chicago and Southern Wisconsin operating markets and a related spectrum lease in exchange for an 85% non-controlling interest. Denali will retain the spectrum and assets relating to its Chicago and Southern Wisconsin operating markets. The closings of both transactions are subject to customary closing conditions, including FCC approval, and the closing of Cricket's acquisition of DSM's controlling interest in Denali is subject to the immediately prior closing of the Savary Island transaction. Upon the closing of such transactions, Savary Island and its subsidiaries will be neither guarantors of the notes nor in the Restricted Group nor Subsidiaries under the indenture governing the notes. See Recent Developments Denali Buyout and Savary Island Venture above.

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**The Exchange Offer**

On November 19, 2010, we completed the private offering of \$1,200 million aggregate principal amount of 7.75% Senior Notes due 2020. As part of that offering, we entered into a registration rights agreement with the initial purchasers of the old notes in which we agreed, among other things, to deliver this prospectus to you and to complete an exchange offer for the old notes. Below is a summary of the exchange offer.

Old Notes	7.75% Senior Notes due 2020.
New Notes	Notes of the same series, the issuance of which has been registered under the Securities Act. The terms of the new notes are identical in all material respects to those of the old notes, except that the transfer restrictions, registration rights and additional interest provisions relating to the old notes do not apply to the new notes.
Terms of the Offer	We are offering to exchange a like amount of new notes for our old notes in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. In order to be exchanged, an old note must be properly tendered and accepted. All old notes that are validly tendered and not withdrawn will be exchanged. As of the date of this prospectus, there is \$1,200 million aggregate principal amount of 7.75% Senior Notes due 2020 outstanding. We will issue new notes promptly after the expiration of the exchange offer.
Expiration Time	The exchange offer will expire at 5:00 p.m., New York City time, on January 14, 2011, unless extended.
Procedures for Tendering	<p>To tender old notes, you must complete and sign a letter of transmittal in accordance with the instructions contained in the letter and forward it by mail, facsimile or hand delivery, together with any other documents required by the letter of transmittal, to the exchange agent, either with the old notes to be tendered or in compliance with the specified procedures for guaranteed delivery of old notes. Certain brokers, dealers, commercial banks, trust companies and other nominees may also effect tenders by book-entry transfer. Holders of old notes registered in the name of a broker, dealer, commercial bank, trust company or other nominee are urged to contact such person promptly if they wish to tender old notes pursuant to the exchange offer. See <i>The Exchange Offer Procedures for Tendering</i>.</p> <p>Letters of transmittal and certificates representing old notes should not be sent to us. Such documents should only be sent to the exchange agent. Questions regarding how to tender old notes and requests for information should be directed to the exchange agent. See <i>The Exchange Offer Exchange Agent</i>.</p>
Acceptance of Old Notes for Exchange; Issuance of New Notes	Subject to the conditions stated in <i>The Exchange Offer Conditions to the Exchange Offer</i> , we will accept for exchange any and all old notes which are properly tendered in the exchange offer before the expiration time. The

new notes will be delivered promptly after the expiration time.

Interest Payments on the New Notes

The new notes will bear interest from the date of original issuance of the old notes or, if interest has already been paid on the old notes, from the date interest was most recently paid. If your old notes are accepted for exchange, then you will receive interest on the new notes

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(including any accrued but unpaid additional interest on the old notes) and not on the old notes.

Withdrawal Rights

You may withdraw your tender of old notes at any time before the expiration time.

Conditions to the Exchange Offer

The exchange offer is subject to customary conditions. We may assert or waive these conditions in our sole discretion. If we materially change the terms of the exchange offer, we will resolicit tenders of the old notes. See [The Exchange Offer](#) [Conditions to the Exchange Offer](#) for more information.

Resales of New Notes

Based on interpretations by the staff of the SEC, as detailed in a series of no-action letters issued by the SEC to third parties, we believe that the new notes issued in the exchange offer may be offered for resale, resold or otherwise transferred by you without compliance with the registration and prospectus delivery requirements of the Securities Act as long as:

you are acquiring the new notes in the ordinary course of your business;

you are not participating, do not intend to participate and have no arrangement or understanding with any person to participate in a distribution of the new notes;

you are not an affiliate of ours; and

you are not a broker-dealer that acquired any of its old notes directly from us.

If you fail to satisfy any of the foregoing conditions, you will not be permitted to tender your old notes in the exchange offer and you must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any sale or other transfer of your old notes unless such sale is made pursuant to an exemption from such requirements.

Each broker or dealer that receives new notes for its own account in exchange for old notes that were acquired as a result of market-making or other trading activities must acknowledge that it will comply with the registration and prospectus delivery requirements of the Securities Act in connection with any offer to resell, resale or other transfer of the new notes issued in the exchange offer, including the delivery of a prospectus that contains information with respect to any selling holder required by the Securities Act in connection with any resale of the new notes. See [The Exchange Offer](#) [Resales of New Notes](#).

Exchange Agent

Wells Fargo Bank, National Association, is serving as the exchange agent in connection with the exchange offer. The address and telephone and facsimile numbers of the exchange agent are listed under the heading [The](#)

Exchange Offer Exchange Agent.

Use of Proceeds

We will not receive any proceeds from the issuance of new notes in the exchange offer. We will pay all expenses incident to the exchange offer. See Use of Proceeds and The Exchange Offer Fees and Expenses.

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**Certain U.S. Federal Income Tax Considerations**

The exchange of old notes for new notes in the exchange offer will not be a taxable transaction for United States federal income tax purposes. See **Certain U.S. Federal Income Tax Considerations** on page 99.

**Risk Factors**

You should carefully consider the matters set forth under **Risk Factors** before you decide to tender your old notes pursuant to the exchange offer.



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**The New Notes**

Issuer	Cricket Communications, Inc.
Securities	Up to \$1,200 million aggregate principal amount of 7.75% Senior Notes due 2020. The terms of the new notes are identical in all material respects to those of the old notes, except that the transfer restrictions, registration rights and additional interest provisions relating to the old notes do not apply to the new notes.
Maturity	October 15, 2020
Interest	Annual rate: 7.75%. The new notes will pay interest semi-annually in cash in arrears on April 15 and October 15 of each year.
Guarantees	<p>The new notes will be guaranteed by our parent, Leap Wireless International, Inc., by our wholly owned subsidiary Cricket License Company, LLC, and by any future restricted subsidiary that guarantees any indebtedness of Cricket or a guarantor of the notes.</p> <p>Our non-guarantor restricted subsidiaries and designated entities had total assets of \$627.7 million as of September 30, 2010, and had total revenues and operating losses of \$162.3 million and \$14.3 million, respectively, for the nine months ended September 30, 2010, and \$153.7 million and \$98.7 million, respectively, for the year ended December 31, 2009.</p>
Ranking	<p>The new notes and guarantees:</p> <ul style="list-style-type: none"> <li>will be our and the guarantors' general unsubordinated obligations;</li> <li>will rank equally in right of payment with all of our and the guarantors' existing and future senior unsecured indebtedness;</li> <li>will be effectively junior to all of our and the guarantors' existing and future secured indebtedness, including our 7.75% Secured Notes to the extent of the value of the collateral securing such indebtedness;</li> <li>will be effectively junior to existing and future liabilities of our subsidiaries that are not guarantors and of any designated entities to the extent of the value of the assets of such entities; and</li> <li>will be senior in right of payment to any of our and the guarantors' future subordinated indebtedness.</li> </ul>
Optional Redemption	The new notes may be redeemed, in whole or in part, at any time on or after October 15, 2015, at the redemption prices described in this prospectus, plus accrued and unpaid interest. See Description of New Notes Optional Redemption. Prior to October 15, 2015, we may redeem the new notes, in whole or in part, at a redemption price equal to 100% of

the principal amount thereof plus the applicable premium, plus accrued and unpaid interest and any additional interest as described in Description of New Notes Optional Redemption.

Prior to October 15, 2013, we may redeem up to 35% of the aggregate principal amount of the new notes with the net cash proceeds from specified equity offerings at a redemption price set forth in Description of New Notes Optional Redemption. We may, however, only make these redemptions if at least 50% of the

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aggregate principal amount of the new notes issued under the indenture remains outstanding after the redemptions.

Change of Control

If a change of control occurs, each holder of new notes may require us to repurchase all of the holder's new notes at a purchase price equal to 101% of the principal amount of the notes, plus accrued and unpaid interest. In addition, if 90% or more of the new notes are purchased in a change of control offer, we may redeem the remaining new notes. See Description of New Notes Repurchase at the Option of Holders Change of Control.

Certain Covenants

The indenture governing the new notes, among other things, limits our ability to:

incur additional indebtedness;

create liens or other encumbrances;

place limitations on distributions from restricted subsidiaries;

pay dividends, make investments, prepay subordinated indebtedness or make other restricted payments;

issue or sell capital stock of restricted subsidiaries;

issue guarantees;

sell or otherwise dispose of all or substantially all of our assets;

enter into transactions with our affiliates; and

make acquisitions or merge or consolidate with another entity.

The covenants are subject to a number of important qualifications and exceptions that are described in the sections of this prospectus entitled Description of New Notes Certain Covenants.

If the notes are rated investment grade by two out of three rating agencies (Moody's, S&P and Fitch) and we are not in default under the indenture, certain of the covenants in the indenture will be suspended.

Use of Proceeds

We will not receive proceeds from the issuance of the new notes offered hereby. In consideration for issuing the new notes in exchange for old notes as described in this prospectus, we will receive old notes of like principal amount. The old notes surrendered in exchange for the new notes will be retired and canceled.

**Table of Contents****Summary Consolidated Financial Data and Other Data**

The following tables set forth selected consolidated financial and other data as of and for the years ended December 31, 2005, 2006, 2007, 2008 and 2009 and as of and for the nine months ended September 30, 2009 and 2010. We derived our summary historical financial data for the years ended December 31, 2007, 2008 and 2009 from our consolidated financial statements appearing in Leap's Annual Report on Form 10-K for the year ended December 31, 2009, which are incorporated by reference into this prospectus. We derived our summary historical financial data for the nine months ended September 30, 2009 and 2010 from our unaudited consolidated financial statements appearing in Leap's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2010, which is incorporated by reference into this prospectus. For a more detailed explanation of our financial condition and operating results, you should read the following summary historical financial and operating data in conjunction with our historical financial statements and related notes and Selected Consolidated Financial Data, and Management's Discussion and Analysis of Financial Condition and Results of Operations in Leap's Annual Report on Form 10-K for the year ended December 31, 2009 and Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, June 30, and September 30, 2010, each of which is incorporated herein by reference. The summary historical financial and operating data presented in this prospectus may not be indicative of future performance. Interim results are not necessarily indicative of the results to be expected for the entire financial year.

	<b>Year Ended December 31,</b>					<b>Nine Months Ended</b>	
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2009</b>	<b>2010</b>
	<b>(Dollars in thousands)</b>					<b>(Unaudited)</b>	
<b>Statement of Operations Data(1)</b>							
Revenues:							
Service revenues	\$ 768,916	\$ 956,365	\$ 1,395,667	\$ 1,709,101	\$ 2,143,829	\$ 1,596,858	\$ 1,747,058
Equipment revenues	188,855	210,822	235,136	249,761	239,333	187,005	143,152
Total revenues	957,771	1,167,187	1,630,803	1,958,862	2,383,162	1,783,863	1,890,210
Operating expenses:							
Cost of service exclusive of items shown separately (below)	(203,548)	(264,162)	(384,128)	(488,298)	(609,006)	(455,618)	(521,780)
Cost of equipment	(230,520)	(310,834)	(405,997)	(465,422)	(561,262)	(419,073)	(399,367)
Selling and marketing	(100,042)	(159,257)	(206,213)	(294,917)	(411,564)	(311,913)	(307,275)
General and administrative	(159,741)	(196,604)	(271,536)	(331,691)	(358,452)	(274,192)	(270,402)
Depreciation and amortization	(195,462)	(226,747)	(302,201)	(331,448)	(410,697)	(297,230)	(333,950)
Impairment of assets	(12,043)	(7,912)	(1,368)	(177)	(639)	(639)	(477,327)
	(901,356)	(1,165,516)	(1,571,443)	(1,911,953)	(2,351,620)	(1,758,665)	(2,310,101)

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Total operating expenses								
Gain (loss) on sale or disposal of assets	14,587	22,054	902	(209)	(418)	1,436	(3,864)	
Operating income (loss)	71,002	23,725	60,262	46,700	31,124	26,634	(423,755)	
Equity in net income (loss) of investees, net			(2,309)	(298)	3,946	2,990	1,142	
Interest income	9,957	23,063	28,939	14,571	3,806	2,314	934	
Interest expense	(30,051)	(61,334)	(121,231)	(158,259)	(210,389)	(150,040)	(181,062)	
Other income (expense), net	1,392	(3,089)	(6,182)	(7,125)	469	(126)	3,207	
Loss on extinguishment of debt					(26,310)	(26,310)		
Income (loss) before income taxes and cumulative effect of change in accounting principle	52,300	(17,635)	(40,521)	(104,411)	(197,354)	(144,538)	(599,534)	
Income tax expense	(21,615)	(8,469)	(35,924)	(38,970)	(40,609)	(29,412)	(18,537)	
Income (loss) before cumulative effect of change in accounting principle	30,685	(26,104)	(76,445)	(143,381)	(237,963)	(173,950)	(618,071)	
Cumulative effect of change in accounting principle		623						
Net income (loss)	30,685	(25,481)	(76,445)	(143,381)	(237,963)	(173,950)	(618,071)	
Accretion of redeemable non-controlling interests, net of tax		(1,321)	(3,854)	(6,820)	(1,529)	(3,670)	(4,484)	
Net income (loss) attributable to common stockholders	\$ 30,685	\$ (26,802)	\$ (80,299)	\$ (150,201)	\$ (239,492)	\$ (177,620)	\$ (622,555)	

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	2005	2006	As of December 31, 2007 (In thousands)			2008	2009	As of September 30, 2010 (Unaudited)
<b>Balance Sheet Data:</b>								
Cash and cash equivalents	\$ 293,073	\$ 372,812	\$ 433,337	\$ 357,708	\$ 174,999	\$ 308,295		
Short-term investments	90,981	66,400	179,233	238,143	389,154	256,303		
Working capital	245,366	185,191	380,384	278,576	272,974	218,832		
Restricted cash, cash equivalents and short-term investments(2)	13,759	13,581	15,550	4,780	3,866	3,503		
Goodwill(3)	425,782	425,782	425,782	430,101	430,101			
Total assets	2,499,946	4,084,947	4,432,998	5,052,857	5,371,721	4,811,428		
Capital leases	17,243	16,459	53,238	13,993	12,285	10,809		
Long-term debt	588,333	1,676,500	2,033,902	2,566,025	2,735,318	2,726,909		
Total stockholders equity	1,517,601	1,769,348	1,717,505	1,612,676	1,690,530	1,093,785		

	Three Months Ended							
	September 30, 2008	December 31, 2008	March 31, 2009	June 30, 2009	September 30, 2009 (Unaudited)	December 31, 2009	March 31, 2010	June 30, 2010
	3,460,140	3,844,660	4,337,426	4,540,180	4,656,362	4,954,105	5,399,872	5,288,157
	155,779	385,292	492,753	202,767	116,182	297,743	445,768	(111,718)
\$	\$ 42.95	\$ 42.44	\$ 42.21	\$ 40.73	\$ 39.60	\$ 38.66	\$ 37.96	\$ 37.61
\$	\$ 201	\$ 182	\$ 195	\$ 201	\$ 208	\$ 181	\$ 171	\$ 215
\$	\$ 21.50	\$ 20.55	\$ 20.03	\$ 18.42	\$ 17.73	\$ 17.10	\$ 17.41	\$ 17.51
	4.2%	3.8%	3.3%	4.4%	5.4%	4.7%	4.5%	5.0%

	Year Ended December 31,					Nine Months Ended September 30,	
	2005	2006	2007	2008	2009	2009	2010
						(Unaudited and in thousands, except for ratios and percentages)	

**Other Financial****Data:**

Adjusted OIBDA(9)	\$ 276,399	\$ 256,055	\$ 392,268	\$ 413,749	\$ 485,591	\$ 356,136	\$ 418,249
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Adjusted OIBDA margin(10)	36%	27%	28%	24%	23%	22%	24%
Capital expenditures	\$ 208,808	\$ 591,295	\$ 504,770	\$ 795,678	\$ 699,525	\$ 577,542	\$ 298,927
<b>Statement of Cash Flow Data:</b>							
Net cash provided by operating activities	\$ 308,280	\$ 289,871	\$ 316,181	\$ 350,646	\$ 284,317	\$ 194,825	\$ 326,254
Net cash used in investing activities	\$ (332,112)	\$ (1,550,624)	\$ (622,728)	\$ (909,978)	\$ (875,792)	\$ (755,728)	\$ (161,981)
Net cash provided by (used in) financing activities	\$ 175,764	\$ 1,340,492	\$ 367,072	\$ 483,703	\$ 408,766	\$ 426,156	\$ (30,977)
Ratio of earnings to fixed charges(11)	1.7x						

- (1) Our consolidated financial information has been adjusted retrospectively to give effect to Leap's adoption on January 1, 2009 of the Financial Accounting Standards Board's authoritative guidance for non-controlling interests. The cumulative impact to our financial statements as a result of the adoption of the guidance for non-controlling interests resulted in a \$9.2 million reduction to stockholders' equity, a \$5.8 million reduction to deferred tax liabilities and a \$15.0 million increase to redeemable non-controlling interests (formerly referred to as minority interests) as of December 31, 2008. We have retrospectively applied the guidance for non-controlling interests to all prior periods.
- (2) Restricted cash, cash equivalents and short-term investments consist primarily of amounts that we have set aside to satisfy certain contractual obligations. From 2005 to 2007, restricted cash, cash equivalents and short-term investments primarily consisted of amounts we had set aside to satisfy remaining allowed administrative claims and allowed priority claims against Leap and Cricket following their emergence from bankruptcy.

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- (3) Goodwill primarily represents the excess of our reorganization value over the fair value of identified tangible and intangible assets recorded in connection with fresh-start reporting as of July 31, 2004. In connection with our annual goodwill impairment test performed during the third quarter of 2010, we determined that the implied value of our goodwill was zero. As a result, we recorded an impairment charge totaling \$430.1 million in the third quarter of 2010, reducing the carrying amount of our goodwill to zero.
- (4) We recognize a net customer addition for each Cricket Wireless, Cricket Broadband and Cricket PAYGo line of service activated by a customer. Includes subscribers and net customer additions for Cricket services offered by Cricket, LCW Operations and Denali Operations. Net customer additions for the three months ended September 30, 2008 exclude customers in the Hargray Wireless markets in South Carolina and Georgia that we acquired in April 2008. We completed the upgrade of the Hargray Wireless networks and introduced Cricket service in these markets in October 2008. Commencing with the fourth quarter of 2008, our customer additions include customers in the former Hargray Wireless markets.
- (5) ARPU is service revenue divided by the weighted-average number of customers, divided by the number of months during the period being measured. Management uses ARPU to identify average revenue per customer, to track changes in average customer revenues over time, to help evaluate how changes in our business, including changes in our service offerings, affect average revenue per customer, and to forecast future service revenue. In addition, ARPU provides management with a useful measure to compare our subscriber revenue to that of other wireless communications providers. Under our current revenue recognition policy, regulatory fees and telecommunications taxes that are billed and collected from our customers are reported as service revenues net of amounts that we remit to government agencies. Effective August 2010 with the launch of our new all-inclusive service plans, we no longer bill and collect these fees and taxes from customers, although we incur a reduction to our reported service revenues when we remit these fees and taxes to governmental agencies. As a result, for purposes of our calculation of ARPU, these fees and taxes with respect to our all-inclusive plans have been added back to service revenues. In a corresponding adjustment described below, these fees and taxes remitted with respect to our all-inclusive plans have been added to our cost of service for purposes of calculating CCU.

Customers of our Cricket Wireless and Cricket Broadband service are generally disconnected from service approximately 30 days after failing to pay a monthly bill. Customers of our Cricket PAYGo service are generally disconnected from service if they have not replenished or topped up their account within 60 days after the end of their current term of service. Therefore, because our calculation of weighted-average number of customers includes customers who have yet to disconnect service because they have either not paid their last bill or have not replenished or topped up their account, ARPU may appear lower during periods in which we have significant disconnect activity. We believe investors use ARPU primarily as a tool to track changes in our average revenue per customer and to compare our per customer service revenues to those of other wireless communications providers. Other companies may calculate this measure differently. See Reconciliation of Non-GAAP Financial Measures below.

- (6) CPGA is selling and marketing costs (excluding applicable share-based compensation expense included in selling and marketing expense), and equipment subsidy (generally defined as cost of equipment less equipment revenue), less the net loss on equipment transactions and third-party commissions unrelated to the initial customer acquisition, divided by the total number of gross new customer additions during the period being measured. The net loss on equipment transactions unrelated to the initial customer acquisition includes the revenues and costs associated with the sale of wireless devices to existing customers as well as costs associated with device replacements and repairs (other than warranty costs which are the responsibility of the device manufacturers). Commissions unrelated to the initial customer acquisition are commissions paid to third parties for certain activities related to the continuing service of customers. We deduct customers who do not pay their monthly bill



for their second month of service from our gross customer additions, which tends to increase CPGA because we incur the costs associated with this customer without receiving the benefit of a gross customer addition. Management uses CPGA to measure the efficiency of our customer acquisition efforts, to track changes in our average cost of acquiring new subscribers over time, and to help evaluate how changes in our sales and distribution strategies affect the cost-efficiency of our customer acquisition efforts. In addition, CPGA provides management with a useful measure to compare our per customer acquisition costs with those of other wireless communications providers. We believe investors use CPGA primarily as a tool to

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track changes in our average cost of acquiring new customers and to compare our per customer acquisition costs to those of other wireless communications providers. Other companies may calculate this measure differently. See Reconciliation of Non-GAAP Financial Measures below.

- (7) CCU is cost of service and general and administrative costs (excluding applicable share-based compensation expense included in cost of service and general and administrative expense) plus net loss on equipment transactions and third-party commissions unrelated to the initial customer acquisition (which includes the gain or loss on the sale of devices to existing customers, costs associated with device replacements and repairs (other than warranty costs which are the responsibility of the device manufacturers) and commissions paid to third parties for certain activities related to the continuing service of customers), divided by the weighted-average number of customers, divided by the number of months during the period being measured. CCU does not include any depreciation and amortization expense. In connection with the launch of our new all-inclusive service plans in August 2010, regulatory fees and telecommunications taxes with respect to these plans that we pay and no longer bill and collect from our customers have been added to cost of service for purposes of calculating CCU. Management uses CCU as a tool to evaluate the non-selling cash expenses associated with ongoing business operations on a per customer basis, to track changes in these non-selling cash costs over time, and to help evaluate how changes in our business operations affect non-selling cash costs per customer. In addition, CCU provides management with a useful measure to compare our non-selling cash costs per customer with those of other wireless communications providers. We believe investors use CCU primarily as a tool to track changes in our non-selling cash costs over time and to compare our non-selling cash costs to those of other wireless communications providers. Other companies may calculate this measure differently. See Reconciliation of Non-GAAP Financial Measures below.
- (8) Churn, which measures customer turnover, is calculated as the net number of customers that disconnect from our service divided by the weighted-average number of customers divided by the number of months during the period being measured. Customers who do not pay their monthly bill for their second month of service are deducted from our gross customer additions in the month in which they are disconnected; as a result, these customers are not included in churn. Customers of our Cricket Wireless and Cricket Broadband service are generally disconnected from service approximately 30 days after failing to pay a monthly bill, and pay-in-advance customers who ask to terminate their service are disconnected when their paid service period ends. Customers of our Cricket PAYGo service are generally disconnected from service if they have not replenished or topped up their account within 60 days after the end of their current term of service. Management uses churn to measure our retention of customers, to measure changes in customer retention over time, and to help evaluate how changes in our business affect customer retention. In addition, churn provides management with a useful measure to compare our customer turnover activity to that of other wireless communications providers. We believe investors use churn primarily as a tool to track changes in our customer retention over time and to compare our customer retention to that of other wireless communications providers. Other companies may calculate this measure differently. Churn for the three months ended September 30, 2008 excludes customers in Hargray Wireless markets in South Carolina and Georgia that we acquired in April 2008. We completed the upgrade of the Hargray Wireless networks and introduced Cricket service in these markets in October 2008. Commencing with the fourth quarter of 2008, churn includes customers in the former Hargray Wireless markets.
- (9) Adjusted OIBDA is a non-GAAP financial measure defined as operating income (loss) before depreciation and amortization, adjusted to exclude the effects of: gain/(loss) on sale/disposal of assets; impairment of assets; and share-based compensation expense. Adjusted OIBDA should not be construed as an alternative to operating income or net income as determined in accordance with GAAP, or as an alternative to cash flows from operating activities as determined in accordance with GAAP or as a measure of liquidity.

In a capital-intensive industry such as wireless telecommunications, management believes that adjusted OIBDA and the associated percentage margin calculations are meaningful measures of our operating performance. We use adjusted OIBDA as a supplemental performance measure because management believes it facilitates comparisons of our operating performance from period to period and comparisons of our operating performance to that of other companies by backing out potential differences caused by the age and book depreciation of fixed assets (affecting relative depreciation expenses) as well as the items described above for which additional adjustments were made. While depreciation and amortization are considered

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operating costs under GAAP, these expenses primarily represent the non-cash current period allocation of costs associated with long-lived assets acquired or constructed in prior periods. Because adjusted OIBDA facilitates internal comparisons of our historical operating performance, management also uses this metric for business planning purposes and to measure our performance relative to that of our competitors. In addition, we believe that adjusted OIBDA and similar measures are widely used by investors, financial analysts and credit rating agencies as measures of our financial performance over time and to compare our financial performance with that of other companies in our industry.

Adjusted OIBDA has limitations as an analytical tool, and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations include:

it does not reflect capital expenditures;

although it does not include depreciation and amortization, the assets being depreciated and amortized will often have to be replaced in the future and adjusted OIBDA does not reflect cash requirements for such replacements;

it does not reflect costs associated with share-based awards exchanged for employee services;

it does not reflect the interest expense necessary to service interest or principal payments on current or future indebtedness;

it does not reflect expenses incurred for the payment of income taxes and other taxes; and

other companies, including companies in our industry, may calculate this measure differently than we do, limiting its usefulness as a comparative measure.

Management understands these limitations and considers adjusted OIBDA as a financial performance measure that supplements but does not replace the information provided to management by our GAAP results. See Reconciliation of Non-GAAP Financial Measures below.

- (10) Adjusted OIBDA margin is calculated by dividing adjusted OIBDA by service revenues. See Reconciliation of Non-GAAP Financial Measures below.
- (11) For purposes of calculating the ratio of earnings to fixed charges, earnings represent income (loss) before income taxes, cumulative effect of change in accounting principle, accretion of redeemable non-controlling interests, net of tax and equity in net income (loss) of investees, net, plus fixed charges and amortization of capitalized interest, minus amounts of capitalized interest. Fixed charges consist of interest expense, whether expensed or capitalized, and the interest portion of rental expense inherent in our operating leases. The portion of total rental expense that represents the interest factor is estimated to be 33%. Our earnings were inadequate to cover fixed charges for the nine months ended September 30, 2010 and 2009 by \$591.2 million and \$160.9 million, respectively, and for the years ended December 31, 2009, 2008, 2007 and 2006 by \$211.8 million, \$153.4 million, \$81.0 million and \$33.5 million, respectively.

**Reconciliation of Non-GAAP Financial Measures**

We utilize certain financial measures, as described above, that are not calculated based on GAAP. Certain of these financial measures are considered non-GAAP financial measures within the meaning of Item 10 of Regulation S-K promulgated by the SEC.



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**ARPU** The following table reconciles total service revenues used in the calculation of ARPU to service revenues, which we consider to be the most directly comparable GAAP financial measure to ARPU (unaudited and in thousands, except weighted-average number of customers and ARPU). Effective August 2010 with the launch of our new all-inclusive service plans, we no longer bill and collect regulatory fees and telecommunications taxes from customers, although we incur a reduction to our reported service revenues when we remit these fees and taxes to governmental agencies. As a result, for purposes of our calculation of ARPU, these fees and taxes with respect to our all-inclusive service plans have been added back to service revenues in the third quarter of 2010.

	<b>Three Months Ended</b>							
	<b>Sep. 30, 2008</b>	<b>Dec. 31, 2008</b>	<b>Mar. 31, 2009</b>	<b>Jun. 30, 2009</b>	<b>Sep. 30, 2009</b>	<b>Dec. 31, 2009</b>	<b>Mar. 31, 2010</b>	<b>June 30, 2010</b>
es e s and ations for ive	\$ 434,523	\$ 458,506	\$ 514,005	\$ 541,585	\$ 541,268	\$ 546,971	\$ 584,822	\$ 596,999
in the ARPU	\$ 434,523	\$ 458,506	\$ 514,005	\$ 541,585	\$ 541,268	\$ 546,971	\$ 584,822	\$ 596,999
age	3,371,932	3,600,393	4,058,819	4,432,381	4,555,605	4,716,185	5,135,102	5,290,825
	\$ 42.95	\$ 42.44	\$ 42.21	\$ 40.73	\$ 39.60	\$ 38.66	\$ 37.96	\$ 37.61

**CPGA** The following table reconciles total costs used in the calculation of CPGA to selling and marketing expense, which we consider to be the most directly comparable GAAP financial measure to CPGA (unaudited and in thousands, except gross customer additions and CPGA):

	<b>Three Months Ended</b>								
	<b>Sep. 30, 2008</b>	<b>Dec. 31, 2008</b>	<b>Mar. 31, 2009</b>	<b>Jun. 30, 2009</b>	<b>Sep. 30, 2009</b>	<b>Dec. 31, 2009</b>	<b>Mar. 31, 2010</b>	<b>June 30, 2010</b>	<b>Sep. 30, 2010</b>
ng and eting nse	\$ 77,407	\$ 85,134	\$ 103,523	\$ 96,688	\$ 111,702	\$ 99,651	\$ 111,884	\$ 96,449	\$ 98,9
e-based ensation nse ded in ng and	(871)	(1,174)	(1,583)	(1,466)	(1,866)	(1,349)	(1,106)	(1,831)	(1,5

Marketing expense	113,057	133,017	157,796	127,775	133,502	142,189	168,053	111,041	120,200
Cost of development	(62,174)	(60,417)	(72,982)	(55,823)	(58,200)	(52,328)	(69,132)	(36,542)	(37,400)
Net loss on equipment	(7,880)	(10,885)	(13,448)	(8,392)	(7,708)	(12,521)	(16,141)	(22,025)	(38,800)
Other costs in the calculation of									
GAAP	\$ 119,539	\$ 145,675	\$ 173,306	\$ 158,782	\$ 177,430	\$ 175,642	\$ 193,558	\$ 147,092	\$ 141,300
Other	593,619	801,436	889,911	790,933	851,230	968,039	1,132,998	683,315	644,300
GAAP	\$ 201	\$ 182	\$ 195	\$ 201	\$ 208	\$ 181	\$ 171	\$ 215	\$ 200

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CCU The following table reconciles total costs used in the calculation of CCU to cost of service, which we consider to be the most directly comparable GAAP financial measure to CCU (unaudited and in thousands, except weighted-average number of customers and CCU):

	<b>Three Months Ended</b>							
	<b>Sep. 30, 2008</b>	<b>Dec. 31, 2008</b>	<b>Mar. 31, 2009</b>	<b>Jun. 30, 2009</b>	<b>Sep. 30, 2009</b>	<b>Dec. 31, 2009</b>	<b>Mar. 31, 2010</b>	<b>June 30, 2010</b>
\$	129,708	\$ 128,563	\$ 144,344	\$ 154,567	\$ 156,707	\$ 153,388	\$ 165,934	\$ 175,803
	87,522	91,029	96,177	90,938	87,077	84,260	92,256	88,944
	(7,595)	(8,539)	(10,072)	(8,941)	(9,141)	(8,295)	(6,059)	(8,885)
	7,880	10,885	13,448	8,392	7,708	12,521	16,141	22,025
\$	217,515	\$ 221,938	\$ 243,897	\$ 244,956	\$ 242,351	\$ 241,874	\$ 268,272	\$ 277,887
	3,371,932	3,600,393	4,058,819	4,432,381	4,555,605	4,716,185	5,135,102	5,290,825
\$	21.50	\$ 20.55	\$ 20.03	\$ 18.42	\$ 17.73	\$ 17.10	\$ 17.41	\$ 17.51

Adjusted OIBDA The following table reconciles adjusted OIBDA to operating income (loss), which we consider to be the most directly comparable GAAP financial measure to adjusted OIBDA (unaudited; in thousands):

<b>Leap</b>	<b>Nine Months Ended</b>
<b>Year Ended December 31,</b>	<b>September 30,</b>



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	2005	2006	2007	2008	2009	2009	2010
Operating income (loss)	\$ 71,002	\$ 23,725	\$ 60,262	\$ 46,700	\$ 31,124	\$ 26,634	\$ (423,755)
Plus depreciation and amortization	195,462	226,747	302,201	331,448	410,697	297,230	333,950
OIBDA	\$ 266,464	\$ 250,472	\$ 362,463	\$ 378,148	\$ 441,821	\$ 323,864	\$ (89,805)
Less (gain) loss on sale or disposal of assets	(14,587)	(22,054)	(902)	209	418	(1,436)	3,864
Plus impairment of assets	12,043	7,912	1,368	177	639	639	477,327
Plus share-based compensation expense	12,479	19,725	29,339	35,215	42,713	33,069	26,863
Adjusted OIBDA	\$ 276,399	\$ 256,055	\$ 392,268	\$ 413,749	\$ 485,591	\$ 356,136	\$ 418,249
Adjusted OIBDA margin:							
Service revenues	\$ 768,916	\$ 956,365	\$ 1,395,667	\$ 1,709,101	\$ 2,143,829	\$ 1,596,858	\$ 1,747,058
Adjusted OIBDA margin	36%	27%	28%	24%	23%	22%	24%

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**RISK FACTORS**

You should carefully consider the risk factors set forth below, as well as the other information contained or incorporated by reference in this prospectus, before exchanging your old notes for new notes pursuant to this prospectus. The risks described below are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially and adversely affect our business operations. Any of the following risks could materially adversely affect our business, financial condition or results of operations. In such case, you may lose all or part of your original investment.

**Risks Related to Our Business and Industry**

***We Have Experienced Net Losses, and We May Not Be Profitable in the Future.***

We experienced net losses of \$533.3 million and \$618.1 million for the three and nine months ended September 30, 2010, respectively, and net losses of \$238.0 million, \$143.4 million and \$76.4 million for the years ended December 31, 2009, December 31, 2008 and December 31, 2007, respectively. We may not generate profits in the future on a consistent basis or at all. Our strategic objectives depend on our ability to successfully and cost-effectively operate our launched markets, on our ability to forecast and respond appropriately to changes in the competitive and economic environment, on the successful expansion of our distribution channels and on customer acceptance of our Cricket product and service offerings. We have experienced and expect to continue to experience increased expenses in connection with our launch of significant new business expansion efforts, including activities to broaden our product portfolio and distribution channels and to enhance our network coverage and capacity. If we fail to attract additional customers for our Cricket products and services and fail to achieve consistent profitability in the future, that failure could have a negative effect on our financial condition.

***We May Not Be Successful in Increasing Our Customer Base Which Would Negatively Affect Our Business Plans and Financial Outlook.***

Our growth on a quarter-by-quarter basis has varied substantially in the past. We believe that this uneven growth generally reflects seasonal trends in customer activity, promotional activity, competition in the wireless telecommunications market, our pace of new market launches and varying national economic conditions. Our current business plans assume that we will continue to increase our customer base over time, providing us with increased economies of scale. However, we experienced net decreases in our total customers of 111,718 in the second quarter of 2010 and 199,949 in the third quarter of 2010. Our ability to continue to grow our customer base and achieve the customer penetration levels we currently believe are possible in our markets is subject to a number of risks, including, among other things, increased competition from existing or new competitors, higher than anticipated churn, our inability to increase our network capacity to meet increasing customer demand, unfavorable economic conditions (which may have a disproportionate negative impact on portions of our customer base), our inability to successfully expand our distribution channels, changes in the demographics of our markets, adverse changes in the legislative and regulatory environment and other factors that may limit our ability to grow our customer base. If we are unable to attract and retain a growing customer base, our current business plans and financial outlook may be harmed.

***We Face Increasing Competition Which Could Have a Material Adverse Effect on Demand for Cricket Service.***

The telecommunications industry is very competitive. In general, we compete with national facilities-based wireless providers and their prepaid affiliates or brands, local and regional carriers, non-facilities-based MVNOs, voice-over-internet-protocol service providers, traditional landline service providers and cable companies. Some of

these competitors are able to offer bundled service offerings which package wireless service offerings with additional service offerings, such as landline phone service, cable or satellite television, media and internet, that we are not able to duplicate.

Some of these competitors have greater name and brand recognition, larger spectrum holdings, larger footprints, access to greater amounts of capital, greater technical, sales, marketing and distribution resources and established relationships with a larger base of current and potential customers. These advantages may allow our

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competitors to provide service offerings with more extensive features or options than those we currently provide, offer the latest and most popular devices through exclusive vendor arrangements, market to broader customer segments, or purchase equipment, supplies, devices and services at lower prices than we can. As device selection and pricing become increasingly important to customers, our inability to offer customers the latest and most popular devices as a result of exclusive dealings between device manufacturers and our larger competitors could put us at a significant competitive disadvantage and make it more difficult for us to attract and retain customers. In addition, some of our competitors are able to offer their customers roaming services at lower rates. As consolidation in the industry creates even larger competitors, advantages that our competitors may have, as well as their bargaining power as wholesale providers of roaming services, may increase. For example, in connection with the offering of our nationwide roaming service, we have encountered problems with certain large wireless carriers in negotiating terms for roaming arrangements that we believe are reasonable, and we believe that consolidation has contributed significantly to such carriers' control over the terms and conditions of wholesale roaming services.

The competitive pressures of the wireless telecommunications industry and the attractive growth prospects in the prepaid segment have continued to increase and have caused a number of our competitors to offer competitively-priced unlimited prepaid and postpaid service offerings or increasingly large bundles of minutes of use at increasingly lower prices, which are competing with the predictable and unlimited Cricket Wireless service plans. For example, AT&T, Sprint Nextel, T-Mobile and Verizon Wireless each offer unlimited service offerings. Sprint Nextel also offers a competitively-priced unlimited service offering under its Boost Unlimited and Virgin Mobile brands, which are similar to our Cricket Wireless service. T-Mobile also offers an unlimited plan that is competitively priced with our Cricket Wireless service. In addition, a number of MVNOs offer competitively-priced service offerings. For example, Tracfone Wireless has introduced a wireless offering under its Straight Talk brand using Verizon's wireless network. Moreover, some competitors offer prepaid wireless plans that are being advertised heavily to the same demographic segments we target. These service offerings have presented, and are expected to continue to present, strong competition in markets in which our offerings overlap.

In addition to voice offerings, there are a number of mobile broadband services that compete with our Cricket Broadband service. AT&T, Sprint Nextel, T-Mobile and Verizon Wireless each offer mobile broadband services. In addition, Clearwire Corporation has launched unlimited 4G wireless broadband service in a number of markets in which we offer Cricket Broadband, and Clearwire has announced plans to launch this service in additional markets. Best Buy also recently launched a mobile broadband product using Sprint's wireless network. These broadband service offerings have presented, and are expected to continue to present, strong competition in markets in which our offerings overlap.

We may also face additional competition from new entrants in the wireless marketplace, many of whom may have significantly more resources than we do. The FCC is pursuing policies designed to increase the number of wireless licenses and spectrum available for the provision of wireless voice and data services in each of our markets, as well as policies to increase the level of intermodal broadband competition. For example, the FCC has adopted rules that allow the partitioning, disaggregation or leasing of wireless licenses, which may increase the number of our competitors. More recently, the FCC announced in March 2010, as part of its National Broadband Plan, the goal of making an additional 500 MHz of spectrum available for broadband use within the next 10 years, of which the FCC stated that 300 MHz should be made available for mobile use within five years. The FCC has also adopted policies to allow satellite operators to use portions of their spectrum for ancillary terrestrial use and recently made further changes intended to facilitate the terrestrial use of this spectrum for wireless voice and broadband services. Taking advantage of such developments, at least one new entrant, LightSquared, has announced plans to launch a new wholesale, nationwide 4G-LTE wireless broadband network integrated with satellite coverage to allow partners to offer terrestrial-only, satellite-only or integrated satellite-terrestrial services to their end users. The FCC has also permitted the offering of broadband services over power lines. The auction and licensing of new spectrum, the re-purposing of other spectrum or the pursuit of policies designed to encourage broadband adoption across wireline and wireless

platforms may result in new or existing competitors acquiring additional capacity, which could allow them to offer services that we may not be able to offer cost-effectively, or at all, with the licenses we hold or to which we have access.

Our ability to remain competitive will depend, in part, on our ability to anticipate and respond to various competitive factors and to keep our costs low. In August 2009 and March 2010, we revised a number of our Cricket

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Wireless service plans to provide additional features previously only available in our higher-priced plans, to eliminate certain fees we previously charged customers who changed their service plans and to include unlimited nationwide roaming and international long distance services. These changes, which were made in response to the competitive and economic environment, resulted in lower average monthly revenue per customer and increased costs. In August 2010, we introduced a number of new initiatives to respond to the evolving competitive landscape, including revising the features of a number of our Cricket service offerings, eliminating certain late fees we previously charged to customers who reinstated their service after having failed to pay their monthly bill on time, and entering into a new wholesale and nationwide roaming agreement and introducing new smartphones and other handsets and devices. These initiatives, however, are significant undertakings, and we expect to incur additional expense in the near term as we implement these changes. In addition, there can be no assurance that any of these new initiatives will be successful. The evolving competitive landscape may result in more competitive pricing, slower growth, higher costs and increased customer turnover. Any of these results or actions could have a material adverse effect on our business, financial condition and operating results.

***General Economic Conditions May Adversely Affect Our Business, Financial Performance or Ability to Obtain Debt or Equity Financing on Reasonable Terms or at All.***

Our business and financial performance are sensitive to changes in general economic conditions, including changes in interest rates, consumer credit conditions, consumer debt levels, consumer confidence, rates of inflation (or concerns about deflation), unemployment rates, energy costs and other macro-economic factors. Market and economic conditions have been unprecedented and challenging in recent years. Continued concerns about the systemic impact of a long-term downturn, high unemployment, high energy costs, the availability and cost of credit and unstable housing and mortgage markets have contributed to increased market volatility and diminished expectations for the economy. Concern about the stability of the financial markets and the strength of counterparties has led many lenders and institutional investors to reduce or cease to provide credit to businesses and consumers, and less liquid credit markets have adversely affected the cost and availability of credit. These factors have led to a decrease in spending by businesses and consumers alike.

Continued market turbulence and weak economic conditions may materially adversely affect our business and financial performance in a number of ways. Because we do not require customers to sign fixed-term contracts or pass a credit check, our service is available to a broad customer base and may be attractive to a market segment that is more vulnerable to weak economic conditions. As a result, during general economic downturns, we may have greater difficulty in gaining new customers within this base for our services and existing customers may be more likely to terminate service due to an inability to pay. For example, high unemployment levels have recently impacted our customer base, especially the lower-income segment of our customer base, by decreasing their discretionary income, which has resulted in higher levels of churn. Continued recessionary conditions and tight credit conditions may also adversely impact our vendors and dealers, some of which have filed for or may be considering bankruptcy, or may experience cash flow or liquidity problems, any of which could adversely impact our ability to distribute, market or sell our products and services. For example, in 2009, Nortel Networks, which has provided a significant amount of our network infrastructure, sold substantially all of its network infrastructure business to Ericsson. Sustained difficult, or worsening, general economic conditions could have a material adverse effect on our business, financial condition and results of operations.

In addition, general economic conditions have significantly affected the ability of many companies to raise additional funding in the capital markets. At times, U.S. credit markets have experienced significant dislocations and liquidity disruptions which have caused the spreads on prospective debt financings to widen considerably. These circumstances materially impacted liquidity in the debt markets, making financing terms for borrowers less attractive and resulting in the unavailability of some forms of debt financing. Uncertainty in the credit markets could negatively impact our ability to access additional debt financing or to refinance existing indebtedness in the future on favorable terms or at

all. These general economic conditions, combined with intensified competition in the wireless telecommunications industry and other factors, have also adversely affected the trading prices of equity securities of many U.S. companies, including Leap, which could significantly limit our ability to raise additional capital through the issuance of common stock, preferred stock or other equity securities. Any of these risks could

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impair our ability to fund our operations or limit our ability to expand our business, which could have a material adverse effect on our business, financial condition and results of operations.

***If We Experience Low Rates of Customer Acquisition or High Rates of Customer Turnover, Our Ability to Become Profitable Will Decrease.***

Our rates of customer acquisition and turnover are affected by a number of competitive factors in addition to the macro-economic factors described above, including the size of our calling areas, network performance and reliability issues, our device and service offerings, customer perceptions of our services, customer care quality and wireless number portability. Prior to the modifications to our service offerings that we introduced in August 2010, we experienced an increasing trend of current customers upgrading their handset by buying a new phone, activating a new line of service, and letting their existing service plan lapse, which resulted in a higher churn rate as many of these customers were counted as having disconnected service but actually were retained. Managing these factors and customers' expectations is essential in attracting and retaining customers. Although we have implemented programs to attract new customers and address customer turnover, we cannot assure you that these programs or our strategies to address customer acquisition and turnover will be successful. In addition, we and Denali launched a significant number of new Cricket markets in 2008 and 2009. In newly launched markets, we expect to initially experience a greater degree of customer turnover due to the number of customers new to Cricket service, although we generally expect that churn will gradually improve as the average tenure of customers in such markets increases. A high rate of customer turnover or low rate of new customer acquisition would reduce revenues and increase the total marketing expenditures required to attract the minimum number of customers required to sustain our business plan which, in turn, could have a material adverse effect on our business, financial condition and results of operations.

***We Have Made Significant Investments, and May Continue to Invest, in Ventures That We Do Not Control.***

We own an 82.5% non-controlling interest in Denali, an entity which acquired a wireless license covering the upper mid-west portion of the U.S. in Auction #66 through a wholly owned subsidiary. Denali acquired its wireless license as a very small business designated entity under FCC regulations. On September 21, 2010, we entered into an agreement to purchase the 17.5% interest we do not own in Denali. Upon the closing of this transaction, Denali will become a wholly owned subsidiary of Cricket. In addition, on September 21, 2010, Denali entered into an agreement with Ring Island to contribute all of its spectrum outside its Chicago and Southern Wisconsin operating markets and a related spectrum lease to Savary Island in exchange for an 85% non-controlling interest. Denali will retain the spectrum and assets relating to its Chicago and Southern Wisconsin operating markets. Savary Island is a newly formed entity that has applied to the FCC to obtain this spectrum as a very small business designated entity under FCC regulations. The closings of both transactions are subject to customary closing conditions, including the approval of the FCC, and the closing of Cricket's acquisition of DSM's controlling interest in Denali is subject to the prior closing of the Savary Island transaction.

Our participation in these ventures is structured as a non-controlling interest in accordance with FCC rules and regulations. We have agreements with our current and proposed venture partners in Denali and Savary Island that are intended to allow us to participate to a limited extent in the development of the business through the ventures. However, these agreements do not provide us with control over the business strategy, financial goals, build-out plans or other operational aspects of the ventures, and may be terminated for convenience by the controlling members. The FCC's rules restrict our ability to acquire controlling interests in such entities during the period that such entities must maintain their eligibility as a designated entity, as defined by the FCC.

The entities or persons that control these ventures or any other ventures in which we may invest may have interests and goals that are inconsistent or different from ours which could result in the venture taking actions that negatively impact our business or financial condition. In the past, we have had disagreements with the controlling member of our



Denali venture, as discussed in Note 8 to our consolidated financial statements included in Part I Item 1. Financial Statements of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2010, filed with the SEC on August 6, 2010. In addition, if any of the members of our ventures files for bankruptcy or otherwise fails to perform its obligations or does not manage the venture effectively, or if the venture files for bankruptcy, we may lose our equity investment in, and any present or future opportunity to acquire the assets (including wireless

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licenses) of, such entity (although a substantial portion of our investment in Denali consists of, and a significant portion of our investment in Savary Island will consist of, secured debt).

The FCC has implemented rule changes aimed at addressing alleged abuses of its designated entity program. While we do not believe that these recent rule changes materially affect our existing and proposed ventures with Denali and Savary Island, the scope and applicability of these rule changes to these designated entity structures remain in flux and have been the subject to administrative and judicial review. On August 24, 2010, the United States Court of Appeals for the District of Columbia Circuit vacated certain of the FCC's revisions to its designated entity rules. We cannot predict whether and to what extent the FCC will seek to reinstate or to further modify the designated entity rules. In addition, third parties and the federal government have challenged certain designated entity structures alleging violations of federal law and seeking monetary damages. We cannot predict the degree to which rule changes, federal court litigation surrounding designated entity structures, increased regulatory scrutiny or third party or government lawsuits will affect our current or future business ventures, including our existing and proposed arrangements with respect to Denali or Savary Island, or our or Denali's current license holdings or our participation in future FCC spectrum auctions.

***We May Be Unable to Obtain or Maintain the Roaming and Wholesale Services We Need From Other Carriers to Remain Competitive.***

Many of our competitors have regional or national networks which enable them to offer automatic roaming services to their subscribers at a lower cost than we can offer. The networks we operate do not, by themselves, provide national coverage and we must pay fees to other carriers who provide roaming services to us. We currently rely on roaming and wholesale agreements with several carriers for the majority of our roaming services and generally on one key carrier for our data roaming services. We have also entered into a wholesale agreement with an affiliate of Sprint Nextel to permit us to offer Cricket wireless services outside of our current network footprint using Sprint's. Most of our roaming agreements cover voice but not data services and some of these agreements may be terminated on relatively short notice. In addition, we believe that the rates charged to us by some of these carriers are higher than the rates they charge to certain other roaming partners.

The FCC has adopted a report and order and a further order on reconsideration clarifying that commercial mobile radio service providers are required to provide automatic roaming for voice and SMS text messaging services on just, reasonable and non-discriminatory terms. The FCC orders, however, do not address roaming for data services, which are the subject of a further pending proceeding. The orders also do not provide or mandate any specific mechanism for determining the reasonableness of roaming rates for voice or SMS text messaging services and require that roaming complaints be resolved on a case-by-case basis, based on a non-exclusive list of factors that can be taken into account in determining the reasonableness of particular conduct or rates.

In light of the current FCC orders, if we were unexpectedly to lose the benefit of one or more key roaming or wholesale agreements, we may be unable to obtain similar replacement agreements and as a result may be unable to continue providing nationwide voice and data roaming services for our customers or may be unable to provide such services on a cost-effective basis. Any such inability to obtain replacement agreements on a cost-effective basis may limit our ability to compete effectively for wireless customers, which may increase our churn and decrease our revenues, which in turn could materially adversely affect our business, financial condition and results of operations.

***We May Not Realize the Expected Benefits From Our New Wholesale Arrangement.***

As discussed in Part I Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources of our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2010, filed with the SEC on November 3, 2010, on August 2, 2010, we entered into a wholesale

agreement with an affiliate of Sprint Nextel which permits us to offer Cricket wireless services outside our current network footprint using Sprint's network. We have agreed, among other things, to provide a minimum of \$300 million of revenue under the agreement over its initial five-year term (against which we can credit up to \$100 million of service revenue under other existing commercial arrangements between the companies), with a minimum of \$25 million of revenue to be provided in 2011, a minimum of \$75 million of revenue to be provided in each of 2012, 2013 and 2014, and a minimum of \$50 million of revenue to be provided in 2015. Any revenue we

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provide in a given year above the minimum revenue commitment for that particular year will be credited to the next succeeding year.

In addition, in the event we are involved in a change-of-control transaction with another facilities-based wireless carrier with annual revenues of at least \$500 million in the fiscal year preceding the date of the change of control agreement (other than MetroPCS Communications, Inc.), either we (or our successor in interest) or Sprint may terminate the agreement within 60 days following the closing of such a transaction. In connection with any such termination, we (or our successor in interest) would be required to pay to Sprint a specified percentage of the remaining aggregate minimum revenue commitment, with the percentage to be paid depending on the year in which the change of control agreement was entered into, beginning at 40% for any such agreement entered into in or before 2011, 30% for any such agreement entered into in 2012, 20% for any such agreement entered into in 2013 and 10% for any such agreement entered into in 2014 or 2015. In the event that we are involved in a change-of-control transaction with MetroPCS Communications, Inc. during the term of the wholesale agreement, then the agreement would continue in full force and effect, subject to certain revisions, including, without limitation, an increase to the total minimum revenue commitment to \$350 million, taking into account any revenue contributed by Cricket prior to the date thereof.

We entered into this new wholesale agreement to enable us to offer enhanced products and service plans and to strengthen and improve our distribution. However, there are risks and uncertainties that could impact our ability to realize the expected benefits from this arrangement. Customers may not accept our products and service offerings at the levels we expect and our plans to increase our retail distribution channels may not result in additional customers or increased revenues. We cannot guarantee that we will be able to generate sufficient revenue to satisfy the annual and aggregate minimum revenue commitments or that prices for wireless services will not decline to levels below what we have negotiated to pay under the wholesale agreement. We also cannot guarantee that we will be able to renew the agreement on terms that will be acceptable to us following the completion of the initial five-year term of the agreement. Our inability to attract new wireless customers and increase our distribution could materially limit our ability to derive benefits from this new agreement, which could materially adversely affect our business, financial condition and results of operations.

***We Restated Certain of Our Prior Consolidated Financial Statements in 2007, Which Led to Additional Risks and Uncertainties, Including Shareholder Litigation.***

As discussed in Note 2 to our consolidated financial statements included in Part II Item 8. Financial Statements and Supplementary Data of our Annual Report on Form 10-K, as amended, for the year ended December 31, 2006, filed with the SEC on December 26, 2007, we restated our consolidated financial statements as of and for the years ended December 31, 2006 and 2005 (including interim periods therein), for the period from August 1, 2004 to December 31, 2004 and for the period from January 1, 2004 to July 31, 2004. In addition, we restated our condensed consolidated financial statements as of and for the quarterly periods ended June 30, 2007 and March 31, 2007. The determination to restate these consolidated financial statements and quarterly condensed consolidated financial statements was made by Leap's Audit Committee upon management's recommendation following the identification of errors related to (i) the timing and recognition of certain service revenues and operating expenses, (ii) the recognition of service revenues for certain customers that voluntarily disconnected service, (iii) the classification of certain components of service revenues, equipment revenues and operating expenses and (iv) the determination of a tax valuation allowance during the second quarter of 2007.

As a result of these events, we became subject to a number of additional risks and uncertainties, including substantial unanticipated costs for accounting and legal fees in connection with or related to the restatement and related litigation, which we recently settled.

***Our Business and Stock Price May Be Adversely Affected if Our Internal Controls Are Not Effective.***

Section 404 of the Sarbanes-Oxley Act of 2002 requires companies to conduct a comprehensive evaluation of their internal control over financial reporting. To comply with this statute, each year we are required to document and test our internal control over financial reporting; our management is required to assess and issue a report

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concerning our internal control over financial reporting; and our independent registered public accounting firm is required to report on the effectiveness of our internal control over financial reporting.

In our quarterly and annual reports (as amended) for the periods ended from December 31, 2006 through September 30, 2008, we reported a material weakness in our internal control over financial reporting which related to the design of controls over the preparation and review of the account reconciliations and analysis of revenues, cost of revenue and deferred revenues, and ineffective testing of changes made to our revenue and billing systems in connection with the introduction or modification of service offerings. As described in Part II Item 9A. Controls and Procedures of our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the SEC on February 27, 2009, we took a number of actions to remediate this material weakness, which included reviewing and designing enhancements to certain of our systems and processes relating to revenue recognition and user acceptance testing and hiring and promoting additional accounting personnel with the appropriate skills, training and experience in these areas. Based upon the remediation actions described in Part II Item 9A. Controls and Procedures of our Annual Report on Form 10-K for the year ended December 31, 2008, filed with the SEC on February 27, 2009, management concluded that the material weakness described above was remediated as of December 31, 2008.

In addition, we previously reported that certain material weaknesses in our internal control over financial reporting existed at various times during the period from September 30, 2004 through September 30, 2006. These material weaknesses included excessive turnover and inadequate staffing levels in our accounting, financial reporting and tax departments, weaknesses in the preparation of our income tax provision, and weaknesses in our application of lease-related accounting principles, fresh-start reporting oversight, and account reconciliation procedures.

Although we believe we took appropriate actions to remediate the control deficiencies we identified and to strengthen our internal control over financial reporting, we cannot assure you that we will not discover other material weaknesses in the future. The existence of one or more material weaknesses could result in errors in our financial statements, and substantial costs and resources may be required to rectify these or other internal control deficiencies. If we cannot produce reliable financial reports, investors could lose confidence in our reported financial information, the market price of Leap common stock could decline significantly, we may be unable to obtain additional financing to operate and expand our business, and our business and financial condition could be harmed.

***Our Primary Business Strategy May Not Succeed in the Long Term.***

A major element of our business strategy is to offer consumers unlimited wireless services for a flat rate without requiring them to enter into a fixed-term contract or pass a credit check. We provide voice and data services through our own Cricket network footprint and through roaming agreements that we have entered into with other carriers. In addition, we recently entered into a wholesale agreement to permit us to offer Cricket wireless services outside of our current network footprint and a roaming agreement to provide our customers with nationwide data service. Our strategy of offering unlimited wireless services may not prove to be successful in the long term. From time to time, we also evaluate our product and service offerings and the demands of our target customers and may modify, change, adjust or discontinue our product and service offerings or offer new products and services on a permanent, trial or promotional basis. We cannot assure you that these product or service offerings will be successful or prove to be profitable.

***We Expect to Incur Higher Operating Expenses in Recently Launched Markets, and We Could Incur Substantial Costs if We Were to Elect to Build Out Additional New Markets.***

During 2009, we and Denali Operations launched new markets in Chicago, Philadelphia, Washington, D.C., Baltimore and Lake Charles covering approximately 24.2 million additional POPs. Our strategic objectives depend on our ability to successfully and cost-effectively operate these recently launched markets as well as our more mature markets and

on customer acceptance of our Cricket product and service offerings. We generally expect to incur higher operating expenses during periods of business growth and during the first year after we launch service

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in new markets. If we fail to achieve consistent profitability in these markets, that failure could have a material adverse effect on our business, financial condition and results of operations.

In addition, we have identified new markets covering approximately 16 million additional POPs that we could elect to launch with Cricket service in the future using our wireless licenses, although we have not established a timeline for any such build-out or launch. Large-scale construction projects for the build-out of any new markets would require significant capital expenditures and could suffer cost overruns. Significant capital expenditures and increased operating expenses, including in connection with the build-out and launch of new markets, decrease OIBDA and free cash flow for the periods in which we incur such costs. The build-out and operation of any new markets could also be delayed or adversely affected by a variety of factors, uncertainties and contingencies, such as natural disasters, difficulties in obtaining zoning permits or other regulatory approvals, difficulties or delays in clearing U.S. government and/or incumbent commercial licensees from spectrum we intend to utilize, our relationships with our joint venture partners, and the timely performance by third parties of their contractual obligations to construct portions of the networks. In addition, to the extent that we or Denali Operations are operating on AWS spectrum and a federal government agency believes that our planned or ongoing operations interfere with its current uses, we may be required to immediately cease using the spectrum in that particular market for a period of time until the interference is resolved. Any temporary or extended shutdown of one of our or Denali Operations wireless networks in a launched market could materially and adversely affect our competitive position and results of operations.

***If We Are Unable to Manage Our Growth, Our Operations Could Be Adversely Impacted.***

We have experienced substantial growth in a relatively short period of time, and we expect to continue to experience growth in the future in our existing and new markets. During 2009, we and Denali Operations launched new markets in Chicago, Philadelphia, Washington, D.C., Baltimore and Lake Charles covering approximately 24.2 million additional POPs. The management of our growth requires, among other things, continued development of our financial controls, budgeting and forecasting processes and information management systems, stringent control of costs, diligent management of our network infrastructure and its growth, increased spending associated with marketing activities and acquisition of new customers, the ability to attract and retain qualified management personnel and the training of new personnel. Furthermore, the implementation of new or expanded systems or platforms to accommodate our growth, and the transition to such systems or platforms from our existing infrastructure, could result in unpredictable technological or other difficulties. Failure to successfully manage our expected growth and development, to effectively manage launched markets, to enhance our processes and management systems or to timely and adequately resolve any such difficulties could have a material adverse effect on our business, financial condition and results of operations.

In addition, our growth and launch of new markets requires continued management and control of our device inventories. From time to time, we have experienced inventory shortages, most notably with certain of our strongest-selling devices, including shortages we experienced during the second quarter of 2009 and again in the second and third quarters of 2010. While we have recently implemented a new inventory management system and have undertaken other efforts to address inventory forecasting, there can be no assurance that we will not experience inventory shortages in the future. We introduced a significant number of new handsets and devices beginning in August 2010, including smartphones. Any failure to effectively manage and control our device inventories could adversely affect our ability to gain new customers and have a material adverse effect on our business, financial condition and results of operations.

***We May Have Difficulty Managing and Integrating New Joint Ventures or Partnerships That We Form or Companies or Businesses That We Acquire.***



In addition to growing to our business through the operation of our existing and new markets, we may also expand our business by entering into joint ventures or partnerships with others or acquiring other wireless communications companies or complementary businesses. For example, on October 1, 2010, we and Pocket contributed substantially all of our respective wireless spectrum and operating assets in the South Texas region to STX Wireless, a newly formed joint venture controlled and managed by Cricket. At the closing, Cricket received a 75.75% controlling interest in the joint venture and Pocket received a 24.25% non-controlling interest.

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Commencing October 1, 2010, STX Wireless began providing Cricket wireless service in South Texas with a network footprint covering 4.4 million POPs. Entering into joint ventures and partnerships or acquiring other companies or businesses may create numerous possible risks and uncertainties, including unanticipated costs, expenses and liabilities, possible difficulties associated with the integration of the parties' various operations and the potential diversion of management's time and attention from our existing operations. Our failure to effectively manage and integrate new partnerships that we may enter into or companies or businesses that we could acquire could have a material adverse effect on our business, financial condition and results of operations.

***Our Ability to Use Our Net Operating Loss Carryforwards to Reduce Future Tax Payments Could Be Negatively Impacted if There Is an Ownership Change (as Defined Under Section 382 of the Internal Revenue Code); Our Tax Benefit Preservation Plan May Not Be Effective to Prevent an Ownership Change.***

We have substantial federal and state NOLs for income tax purposes. Under the Internal Revenue Code, subject to certain requirements, we may carry forward our federal NOLs for up to a 20-year period to offset future taxable income and reduce our income tax liability. For state income tax purposes, the NOL carryforward period ranges from five to 20 years. At September 30, 2010, we estimated that we had federal NOL carryforwards of approximately \$2.0 billion (which begin to expire in 2022), and state NOL carryforwards of approximately \$2.1 billion (\$21.9 million of which will expire at the end of 2010). While these NOL carryforwards have a potential value of approximately \$765.3 million in cash tax savings, there is no assurance we will be able to realize such tax savings.

If we were to experience an ownership change, as defined in Section 382 of the Internal Revenue Code and similar state provisions, our ability to utilize these NOLs to offset future taxable income could be significantly limited. The occurrence of such a change would generally limit the amount of NOL carryforwards that we could utilize in a given year to the aggregate fair market value of Leap common stock immediately prior to the ownership change, multiplied by the long-term tax-exempt interest rate in effect for the applicable period. In general terms, a change in ownership can occur whenever there is a collective shift in the ownership of a company by more than 50 percentage points by one or more 5% stockholders within a three-year period. The determination of whether an ownership change has occurred for purposes of Section 382 is complex and requires significant judgment. The occurrence of such an ownership change could accelerate cash tax payments we would have to make and result in a substantial portion of our NOLs expiring before we could fully utilize them. As a result, any restriction on our ability to utilize these NOL carryforwards could have a material adverse impact on our business, financial condition and future cash flows.

Recent trading in Leap common stock has increased the risk of an ownership change under Section 382 of the Internal Revenue Code. On September 13, 2010, our board of directors adopted a Tax Benefit Preservation Plan to help deter acquisitions of Leap common stock that could result in an ownership change under Section 382 and thus help preserve our ability to use our NOL carryforwards. The Tax Benefit Preservation Plan is designed to deter acquisitions of Leap common stock that would result in a stockholder owning 4.99% or more of Leap common stock (as calculated under Section 382), or any existing holder of 4.99% or more of Leap common stock acquiring additional shares, by substantially diluting the ownership interest of any such stockholder unless the stockholder obtains an exemption from our board of directors. Because the number of shares of Leap common stock outstanding at any particular time is determined in accordance with Section 382, it may differ from the number of shares that we report as outstanding in our SEC filings.

Although the Tax Benefit Preservation Plan is intended to reduce the likelihood of an adverse ownership change under Section 382, the Tax Benefit Preservation Plan may not prevent such an ownership change from occurring and does not protect against all transactions that could cause an ownership change, such as sales of Leap common stock by certain greater than 5% stockholders or transactions that occurred prior to the adoption of the Tax Benefit Preservation Plan (including by any greater than 5% stockholders who have not disclosed their ownership under Schedules 13D or 13G of the Securities Exchange Act of 1934). Accordingly, we cannot assure you that an ownership change under

Section 382 will not significantly limit the use of our NOLs.

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***A Significant Portion of Our Assets Consists of Wireless Licenses and Other Intangible Assets.***

As of September 30, 2010, 40.3% of our assets consisted of wireless licenses and other intangible assets. The value of our assets, and in particular, our intangible assets, will depend on market conditions, the availability of buyers and similar factors. By their nature, our intangible assets may not have a readily ascertainable market value or may not be readily saleable or, if saleable, there may be substantial delays in their liquidation. For example, prior FCC approval is required in order for us to sell, or for any remedies to be exercised by our lenders with respect to, our wireless licenses, and obtaining such approval could result in significant delays and reduce the proceeds obtained from the sale or other disposition of our wireless licenses.

***The Wireless Industry Is Experiencing Rapid Technological Change, Which May Require Us to Significantly Increase Capital Investment, and We May Lose Customers if We Fail to Keep Up with These Changes.***

The wireless communications industry continues to experience significant technological change, as evidenced by the ongoing improvements in the capacity and quality of digital technology, the development and commercial acceptance of wireless data services, shorter development cycles for new products and enhancements and changes in end-user requirements and preferences. Our continued success will depend, in part, on our ability to anticipate or adapt to technological changes and to offer, on a timely basis, services that meet customer demands.

Competitors have begun providing competing wireless telecommunications service through the use of developing 4G technologies, such as WiMax and LTE. We currently plan to deploy LTE network technology over the next few years. We cannot predict, however, which of many possible future technologies, products or services will be important to maintain our competitive position or what expenditures we will be required to make in order to develop and provide these technologies, products and services. The cost of implementing or competing against future technological innovations may be prohibitive to us, and we may lose customers if we fail to keep up with these changes. For example, we expended a substantial amount of capital to upgrade our network with EvDO technology to offer advanced data services. In addition, we may be required to acquire additional spectrum to deploy these new technologies, which we cannot guarantee would be available to us at a reasonable cost, on a timely basis or at all. There are also risks that current or future versions of the wireless technologies and evolutionary path that we have selected or may select may not be demanded by customers or provide the advantages that we expect. If such upgrades, technologies or services do not become commercially acceptable, our revenues and competitive position could be materially and adversely affected. We cannot assure you that widespread demand for advanced data services will develop at a price level that will allow us to earn a reasonable return on our investment. In addition, there are risks that other wireless carriers on whose networks our customers roam may change their technology to other technologies that are incompatible with ours. As a result, the ability of our customers to roam on such carriers' wireless networks could be adversely affected. If these risks materialize, our business, financial condition or results of operations could be materially adversely affected. Further, we may not be able to negotiate cost-effective data roaming agreements on 4G or other data networks, and we are not able to assure you that customer devices that operate on 4G or other data networks will be available at costs that will make them attractive to customers.

***The Loss of Key Personnel and Difficulty Attracting and Retaining Qualified Personnel Could Harm Our Business.***

We believe our success depends heavily on the contributions of our employees and on attracting, motivating and retaining our officers and other management and technical personnel. We do not, however, generally provide employment contracts to our employees. If we are unable to attract and retain the qualified employees that we need, our business may be harmed.

We have experienced higher than normal employee turnover in the past, including turnover of individuals at the most senior management levels. Our business is managed by a small number of key executive officers, including our CEO, S. Douglas Hutcheson. On September 20, 2010, we announced that our chief operating officer, Albin F. Moschner, was retiring effective as of the earlier of December 31, 2010 or the date on which a successor is appointed. We are currently looking for a new chief operating officer as well as other senior sales and marketing

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personnel. The loss of key individuals in the future may have a material adverse impact on our ability to effectively manage and operate our business. In addition, we may have difficulty attracting and retaining key personnel in future periods, particularly if we were to experience poor operating or financial performance.

***Risks Associated With Wireless Devices Could Pose Product Liability, Health and Safety Risks That Could Adversely Affect Our Business.***

We do not manufacture devices or other equipment sold by us and generally rely on our suppliers to provide us with safe equipment. Our suppliers are required by applicable law to manufacture their devices to meet certain governmentally imposed safety criteria. However, even if the devices we sell meet the regulatory safety criteria, we could be held liable with the equipment manufacturers and suppliers for any harm caused by products we sell if such products are later found to have design or manufacturing defects. We generally have indemnification agreements with the manufacturers who supply us with devices to protect us from direct losses associated with product liability, but we cannot guarantee that we will be fully protected against all losses associated with a product that is found to be defective.

Media reports have suggested that the use of wireless handsets may be linked to various health concerns, including cancer, and may interfere with various electronic medical devices, including hearing aids and pacemakers. Certain class action lawsuits have been filed in the industry claiming damages for alleged health problems arising from the use of wireless handsets. In addition, interest groups have requested that the FCC investigate claims that wireless technologies pose health concerns and cause interference with airbags, anti-lock brakes, hearing aids and other medical devices. The media has also reported incidents of handset battery malfunction, including reports of batteries that have overheated. Malfunctions have caused at least one major handset manufacturer to recall certain batteries used in its handsets, including batteries in a handset sold by Cricket and other wireless providers.

Concerns over possible health and safety risks associated with radio frequency emissions and defective products may discourage the use of wireless handsets, which could decrease demand for our services, or result in regulatory restrictions or increased requirements on the location and operation of cell sites, which could increase our operating expenses. Concerns over possible safety risks could decrease the demand for our services. For example, in 2008, a technical defect was discovered in one of our manufacturer's handsets which appeared to prevent a portion of 911 calls from being heard by the operator. After learning of the defect, we instructed our retail locations to temporarily cease selling the handsets, notified our customers of the matter and directed them to bring their handsets into our retail locations to receive correcting software. If one or more Cricket customers were harmed by a defective product provided to us by a manufacturer and subsequently sold in connection with our services, our ability to add and maintain customers for Cricket service could be materially adversely affected by negative public reactions.

There also are some safety risks associated with the use of wireless devices while operating vehicles or equipment. Concerns over these safety risks and the effect of any legislation that has been and may be adopted in response to these risks could limit our ability to sell our wireless service.

***We Rely Heavily on Third Parties to Provide Specialized Services; a Failure by Such Parties to Provide the Agreed Upon Products or Services Could Materially Adversely Affect Our Business, Results of Operations and Financial Condition.***

We depend heavily on suppliers and contractors with specialized expertise in order for us to efficiently operate our business. In the past, our suppliers, contractors and third-party retailers have not always performed at the levels we expect or at the levels required by their contracts. If key suppliers, contractors, service providers or third-party retailers fail to comply with their contracts, fail to meet our performance expectations or refuse or are unable to supply or provide services to us in the future, our business could be severely disrupted. Generally, there are multiple sources

for the types of products and services we purchase or use. However, we rely on one key vendor for billing services, a limited number of vendors for device logistics, a limited number of vendors for voice and data communications transport services and a limited number of vendors for payment processing services. In December 2008 we entered into a long-term, exclusive services agreement with Convergys Corporation for the

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implementation and ongoing management of a new billing system. Because of the costs and time lags that can be associated with transitioning from one supplier or service provider to another, our business could be substantially disrupted if we were required to replace the products or services of one or more major suppliers or service providers with products or services from another source, especially if the replacement became necessary on short notice. Any such disruption could have a material adverse effect on our business, results of operations and financial condition.

***System Failures, Security Breaches, Business Disruptions and Unauthorized Use or Interference with Our Network or Other Systems Could Result in Higher Churn, Reduced Revenue and Increased Costs, and Could Harm Our Reputation.***

Our technical infrastructure (including our network infrastructure and ancillary functions supporting our network such as service activation, billing and customer care) is vulnerable to damage or interruption from technology failures, power surges or outages, natural disasters, fires, human error, terrorism, intentional wrongdoing or similar events. Unanticipated problems at our facilities or with our technical infrastructure, system or equipment failures, hardware or software failures or defects, computer viruses or hacker attacks could affect the quality of our services and cause network service interruptions. Unauthorized access to or use of customer or account information, including credit card or other personal data, could result in harm to our customers and legal actions against us, and could damage our reputation. In addition, earthquakes, floods, hurricanes, fires and other unforeseen natural disasters or events could materially disrupt our business operations or the provision of Cricket service in one or more markets. For example, during the third quarter of 2008, our customer acquisitions, cost of service and revenues in certain markets were adversely affected by Hurricane Ike and related weather systems. Any costs we incur to restore, repair or replace our network or technical infrastructure, and any costs associated with detecting, monitoring or reducing the incidence of unauthorized use, may be substantial and increase our cost of providing service. Any failure in or interruption of systems that we or third parties maintain to support ancillary functions, such as billing, point of sale, inventory management, customer care and financial reporting, could materially impact our ability to timely and accurately record, process and report information important to our business. If any of the above events were to occur, we could experience higher churn, reduced revenues and increased costs, any of which could harm our reputation and have a material adverse effect on our business, financial condition or results of operations.

***We Have Been Upgrading a Number of Significant Business Systems, Including Our Customer Billing System, and Any Unanticipated Difficulties, Delays or Interruptions with the Transition Could Negatively Impact Our Business.***

We have been upgrading a number of our significant, internal business systems, including our customer billing system. In December 2008, we entered into a long-term, exclusive services agreement with Convergys for the implementation and ongoing management of a new billing system. To help facilitate the transition of customer billing from our previous vendor, VeriSign, Inc., to Convergys, we acquired VeriSign's billing system software and simultaneously entered into a transition services agreement to enable Convergys to provide us with billing services using the VeriSign software we acquired until the conversion to the new system is complete. In addition to the new billing system, we recently completed the implementation of a new inventory management system and new point-of-sale system.

We cannot assure you that we will not experience difficulties, delays or interruptions in connection with our transition to our new billing system. At times during the transition of our billing system, we will be limited in our ability to modify our current product and service offerings or to offer new products and services. In addition, the transition of this system may not progress according to our current schedule and could suffer cost overruns. Significant unexpected difficulties in transitioning our billing or other systems could materially impact our ability to timely and accurately record, process and report information that is important to our business. If any of the above events were to occur, we could experience higher churn, reduced revenues and increased costs, any of which could harm our reputation and have a material adverse effect on our business, financial condition or results of operations.





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***We May Not Be Successful in Protecting and Enforcing Our Intellectual Property Rights.***

We rely on a combination of patent, service mark, trademark, and trade secret laws and contractual restrictions to establish and protect our proprietary rights, all of which only offer limited protection. We endeavor to enter into agreements with our employees and contractors and agreements with parties with whom we do business in order to limit access to and disclosure of our proprietary information. Despite our efforts, the steps we have taken to protect our intellectual property may not prevent the misappropriation of our proprietary rights. Moreover, others may independently develop processes and technologies that are competitive to ours. The enforcement of our intellectual property rights may depend on any legal actions that we undertake against such infringers being successful, but we cannot be sure that any such actions will be successful, even when our rights have been infringed.

We cannot assure you that our pending, or any future, patent applications will be granted, that any existing or future patents will not be challenged, invalidated or circumvented, that any existing or future patents will be enforceable, or that the rights granted under any patent that may issue will provide us with any competitive advantages.

In addition, we cannot assure you that any trademark or service mark registrations will be issued with respect to pending or future applications or that any registered trademarks or service marks will be enforceable or provide adequate protection of our brands. Our inability to secure trademark or service mark protection with respect to our brands could have a material adverse effect on our business, financial condition and results of operations.

***We and Our Suppliers May Be Subject to Claims of Infringement Regarding Telecommunications Technologies That Are Protected by Patents and Other Intellectual Property Rights.***

Telecommunications technologies are protected by a wide array of patents and other intellectual property rights. As a result, third parties have asserted and may in the future assert infringement claims against us or our suppliers based on our or their general business operations, the equipment, software or services that we or they use or provide, or the specific operation of our wireless networks. For example, see Part II Item 1. Legal Proceedings Patent Litigation of our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2010, filed November 3, 2010, which is incorporated by reference herein, for a description of certain patent infringement lawsuits that have been brought against us. Due in part to the growth and expansion of our business operations, we have become subject to increased amounts of litigation, including disputes alleging patent infringement. If plaintiffs in any patent litigation matters brought against us were to prevail, we could be required to pay substantial damages or settlement costs, which could have a material adverse effect on our business, financial condition and results of operations.

We generally have indemnification agreements with the manufacturers, licensors and suppliers who provide us with the equipment, software and technology that we use in our business to help protect us against possible infringement claims. However, depending on the nature and scope of a possible claim, we may not be entitled to seek indemnification from the manufacturer, vendor or supplier under the terms of the agreement. In addition, to the extent that we may be entitled to seek indemnification under the terms of an agreement, we cannot guarantee that the financial condition of an indemnifying party will be sufficient to protect us against all losses associated with infringement claims or that we would be fully indemnified against all possible losses associated with a possible claim. In addition, our suppliers may be subject to infringement claims that could prevent or make it more expensive for them to supply us with the products and services we require to run our business, which could have the effect of slowing or limiting our ability to introduce products and services to our customers. Moreover, we may be subject to claims that products, software and services provided by different vendors which we combine to offer our services may infringe the rights of third parties, and we may not have any indemnification from our vendors for these claims. Whether or not an infringement claim against us or a supplier is valid or successful, it could materially adversely affect our business, financial condition or results of operations by diverting management attention, involving us in costly and time-consuming litigation, requiring us to enter into royalty or licensing agreements (which may not be

available on acceptable terms, or at all) or requiring us to redesign our business operations or systems to avoid claims of infringement. In addition, infringement claims against our suppliers could also require us to purchase products and services at higher prices or from different suppliers and could adversely affect our business by delaying our ability to offer certain products and services to our customers.

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***Action by Congress or Government Agencies May Increase Our Costs of Providing Service or Require Us to Change Our Services.***

The FCC regulates the licensing, construction, modification, operation, ownership, sale and interconnection of wireless communications systems, as do some state and local regulatory agencies. We cannot assure you that the FCC or any state or local agencies having jurisdiction over our business will not adopt regulations or take other enforcement or other actions that would adversely affect our business, impose new costs or require changes in current or planned operations. In addition, state regulatory agencies are increasingly focused on the quality of service and support that wireless carriers provide to their customers and several agencies have proposed or enacted new and potentially burdensome regulations in this area. We also cannot assure you that Congress will not amend the Communications Act, from which the FCC obtains its authority, or enact legislation in a manner that could be adverse to us.

Under existing law, no more than 20% of an FCC licensee's capital stock may be owned, directly or indirectly, or voted by non-U.S. citizens or their representatives, by a foreign government or its representatives or by a foreign corporation. If an FCC licensee is controlled by another entity (as is the case with Leap's ownership and control of subsidiaries that hold FCC licenses), up to 25% of that entity's capital stock may be owned or voted by non-U.S. citizens or their representatives, by a foreign government or its representatives or by a foreign corporation. Foreign ownership above the 25% holding company level may be allowed if the FCC finds such higher levels consistent with the public interest. The FCC has ruled that higher levels of foreign ownership, even up to 100%, are presumptively consistent with the public interest with respect to investors from certain nations. If our foreign ownership were to exceed the permitted level, the FCC could revoke our wireless licenses, which would have a material adverse effect on our business, financial condition and results of operations. Although we could seek a declaratory ruling from the FCC allowing the foreign ownership or could take other actions to reduce our foreign ownership percentage in order to avoid the loss of our licenses, we cannot assure you that we would be able to obtain such a ruling or that any other actions we may take would be successful.

We also are subject, or potentially subject, to numerous additional rules and requirements, including universal service obligations; number portability requirements; number pooling rules; rules governing billing, subscriber privacy and customer proprietary network information; roaming obligations; rules that require wireless service providers to configure their networks to facilitate electronic surveillance by law enforcement officials; rate averaging and integration requirements; rules governing spam, telemarketing and truth-in-billing; and rules requiring us to offer equipment and services that are accessible to and usable by persons with disabilities, among others. There are also pending proceedings exploring the imposition of various types of nondiscrimination, open access and broadband management obligations on our devices and networks; the prohibition of device exclusivity; the possible re-imposition of bright-line spectrum aggregation requirements; further regulation of special access used for wireless backhaul services; and the effects of the siting of communications towers on migratory birds, among others. Some of these requirements and pending proceedings (of which the foregoing examples are not an exhaustive list) pose technical and operational challenges to which we, and the industry as a whole, have not yet developed clear solutions. These requirements generally are the subject of pending FCC or judicial proceedings, and we are unable to predict how they may affect our business, financial condition or results of operations.

In addition, certain states in which we provide service are considering legislation that would require companies selling prepaid wireless services to verify a customer's identity using government identification. Although we request identification from new customers, we currently do not require them to provide identification in order to initiate service with us, and such a requirement could adversely impact our ability to attract new customers for our services.

Our operations are subject to various other laws and regulations, including those regulations promulgated by the Federal Trade Commission, the Federal Aviation Administration, the Environmental Protection Agency, the

Occupational Safety and Health Administration, other federal agencies and state and local regulatory agencies and legislative bodies. Adverse decisions or regulations of these regulatory bodies could negatively impact our operations and costs of doing business. Because of our smaller size, legislation or governmental regulations and orders can significantly increase our costs and affect our competitive position compared to other larger

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telecommunications providers. We are unable to predict the scope, pace or financial impact of regulations and other policy changes that could be adopted by the various governmental entities that oversee portions of our business.

***If Call Volume or Wireless Broadband Usage Exceeds Our Expectations, Our Costs of Providing Service Could Increase, Which Could Have a Material Adverse Effect on Our Operating Expenses.***

Cricket Wireless customers generally use their handsets for voice calls for an average of approximately 1,500 minutes per month, and some markets experience substantially higher call volumes. Our Cricket Wireless service plans bundle certain features, long distance and unlimited service for a fixed monthly fee to more effectively compete with other telecommunications providers. We also offer Cricket Broadband, our unlimited mobile broadband service, and Cricket PAYGo, a pay-as-you-go unlimited prepaid wireless service. We provide voice and data services through our own Cricket network footprint and through voice roaming agreements that we have entered into with other carriers. We recently entered into a wholesale agreement to permit us to offer Cricket wireless services outside of our current network footprint and a roaming agreement to provide our customers with nationwide data service. In addition to our voice services, we also offer Cricket Broadband, our unlimited mobile broadband service. Customer usage of our Cricket Broadband service has been significant.

If customers exceed expected usage for our voice or mobile broadband services, we could face capacity problems and our costs of providing the services could increase. Although we own less spectrum in many of our markets than our competitors, we seek to design our network to accommodate our expected high rates of usage of voice and mobile broadband services, and we continue to assess and seek to implement technological improvements to increase the efficiency of our wireless spectrum. In August 2010, we introduced new smartphones and other handsets and devices, which will likely use greater amounts of network capacity. We currently manage our network and users of our Cricket Broadband service by limiting throughput speeds if their usage adversely impacts our network or service levels or if usage exceeds certain thresholds. However, if future wireless use by Cricket customers exceeds the capacity of our network, service quality may suffer. In addition, our roaming or wholesale costs may be higher than we anticipate. Depending on the extent of customers' use of our network or the roaming or wholesale services we provide, we may be forced to raise the price of our voice or mobile broadband services to reduce volume, further limit data quantities or speeds, otherwise limit the number of new customers, acquire additional spectrum, or incur substantial capital expenditures to improve network capacity or quality.

***We May Be Unable to Acquire Additional Spectrum in the Future at a Reasonable Cost or on a Timely Basis.***

Because we offer unlimited calling services for a fixed rate, our customers' average minutes of use per month is substantially above U.S. averages. In addition, customer usage of our Cricket Broadband service has been significant. We intend to meet demand for our wireless services by utilizing spectrally efficient technologies or by entering into roaming or partnering agreements with other carriers. Despite our spectrum purchases in the FCC's Auction #66, there may come a point where we need to acquire additional spectrum in order to maintain an acceptable grade of service or provide new services to meet increasing customer demands. For example, Denali Operations currently operates on 10 MHz of spectrum in its Chicago market. In the future, we may be required to acquire additional spectrum in this and other markets to satisfy increasing demand (especially for data services) or to deploy new technologies, such as LTE. In addition, we also may acquire additional spectrum in order to enter new strategic markets. However, we cannot assure you that we will be able to acquire additional spectrum at auction or in the after-market at a reasonable cost or that additional spectrum would be made available by the FCC on a timely basis. In addition, the FCC may impose conditions on the use of new wireless broadband mobile spectrum, such as heightened build-out requirements or open access requirements, that may make it less attractive or economical for us. If such additional spectrum is not available to us when required on reasonable terms or at a reasonable cost, our business, financial condition and results of operations could be materially adversely affected.

***Our Wireless Licenses Are Subject to Renewal and May Be Revoked in the Event That We Violate Applicable Laws.***

Our existing wireless licenses are subject to renewal upon the expiration of the 10-year or 15-year period for which they are granted, which renewal period commenced for some of our Personal Communications Services, or

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PCS, wireless licenses in 2006. The FCC will award renewal expectancy to a wireless licensee that timely files a renewal application, has provided substantial service during its past license term and has substantially complied with applicable FCC rules and policies and the Communications Act. Historically, the FCC has approved our license renewal applications. However, the Communications Act provides that licenses may be revoked for cause and license renewal applications denied if the FCC determines that a renewal would not serve the public interest. In addition, if we fail to timely file to renew any wireless license, or fail to meet any regulatory requirements for renewal, including construction and substantial service requirements, we could be denied a license renewal. Many of our wireless licenses are subject to interim or final construction requirements and there is no guarantee that the FCC will find our construction, or the construction of prior licensees, sufficient to meet the build-out or renewal requirements. FCC rules provide that applications competing with a license renewal application may be considered in comparative hearings, and establish the qualifications for competing applications and the standards to be applied in hearings. The FCC recently initiated a rulemaking proceeding to re-evaluate, among other things, its wireless license renewal showings and standards and may in this or other proceedings promulgate changes or additional substantial requirements or conditions to its renewal rules, including revising license build-out requirements. We cannot assure you that the FCC will renew our wireless licenses upon their expiration. If any of our wireless licenses were to be revoked or not renewed upon expiration, we would not be permitted to provide services under that license, which could have a material adverse effect on our business, results of operations and financial condition.

***Future Declines in the Fair Value of Our Wireless Licenses Could Result in Future Impairment Charges.***

As of September 30, 2010, the carrying value of our and Denali's wireless licenses was approximately \$1.9 billion. During the nine months ended September 30, 2010, we recorded an impairment charge of \$0.8 million, and during the years ended December 31, 2009, 2008 and 2007, we recorded impairment charges of \$0.6 million, \$0.2 million and \$1.0 million, respectively.

The market values of wireless licenses have varied over the last several years, and may vary significantly in the future. Valuation swings could occur for a variety of reasons relating to supply and demand, including:

consolidation in the wireless industry allows or requires carriers to sell significant portions of their wireless spectrum holdings;

a sudden large sale of spectrum by one or more wireless providers occurs; or

market prices decline as a result of the sale prices in FCC auctions.

In addition, the price of wireless licenses could decline as a result of the FCC's pursuit of policies designed to increase the number of wireless licenses available in each of our markets. For example, during recent years, the FCC auctioned additional spectrum in the 1700 MHz to 2100 MHz band in Auction #66 and the 700 MHz band in Auction #73, and has announced that it intends to auction additional spectrum in the 2.5 GHz band. If the market value of wireless licenses were to decline significantly, the value of our wireless licenses could be subject to non-cash impairment charges.

We assess potential impairments to our indefinite-lived intangible assets, including wireless licenses, annually and when there is evidence that events or changes in circumstances indicate that an impairment condition may exist. We conduct our annual tests for impairment of our wireless licenses during the third quarter of each year. Estimates of the fair value of our wireless licenses are based primarily on available market prices, including successful bid prices in FCC auctions and selling prices observed in wireless license transactions, pricing trends among historical wireless license transactions, our spectrum holdings within a given market relative to other carriers' holdings and qualitative demographic and economic information concerning the areas that comprise our markets. A significant impairment loss



could have a material adverse effect on our operating income and on the carrying value of our wireless licenses on our balance sheet.

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***Declines in Our Operating or Financial Performance Could Result in an Impairment of Our Indefinite-Lived Assets, Including Goodwill.***

We assess potential impairments to our long-lived assets, including property and equipment and certain intangible assets, when there is evidence that events or changes in circumstances indicate that the carrying value may not be recoverable.

We also assess potential impairments to indefinite-lived intangible assets, including goodwill and wireless licenses, annually and when there is evidence that events or changes in circumstances indicate that an impairment condition may exist. The annual impairment test is conducted during the third quarter of each year by first comparing the book value of our net assets to our fair value. In connection with the annual test in 2010, we based our determination of fair value primarily upon our average market capitalization for the month of August, plus a control premium. Average market capitalization was calculated based upon the average number of shares of Leap common stock outstanding during such month and the average closing price of Leap common stock during such month.

The carrying value of our goodwill was \$430.1 million as of August 31, 2010. As of August 31, 2010, the book value of our net assets exceeded the fair value, determined based upon our average market capitalization during the month of August 2010 and applying an assumed control premium of 30%. As a result, we performed the second step of the assessment to measure the amount of any impairment and subsequently recorded an impairment charge of \$430.1 million in the third quarter of 2010, reducing the carrying amount of our goodwill to zero.

On October 1, 2010, we and Pocket contributed substantially all of our respective wireless spectrum and operating assets in the South Texas region to a new joint venture, STX Wireless, with Cricket receiving a 75.75% controlling interest in the venture and Pocket receiving a 24.25% non-controlling interest. We are in the process of determining the fair value of the net assets acquired and intend to include the final purchase price allocation and other required disclosures in our Annual Report on Form 10-K for the year ending December 31, 2010, which may result in a portion of the purchase price being allocated to goodwill on our consolidated balance sheet. The closing price of Leap common stock was \$12.35 on September 30, 2010 and Leap's market capitalization was below our book value on such date. Since September 30, 2010, the closing price of Leap common stock has ranged from a high of \$12.35 per share to a low of \$10.71 per share on December 2, 2010. If the final purchase price allocation results in the recording of goodwill, and if the price of Leap common stock continues to trade at prices below book value per share, we expect that we will determine, in connection with our fourth quarter impairment evaluation, that we are required to recognize a non-cash impairment charge equal to the full amount of any goodwill recorded as part of this transaction. Any required impairment to goodwill would be a function of the impairment test being performed at the enterprise level and would not relate to the operating results of the acquired business or the purchase price allocation.

***We May Incur Higher Than Anticipated Intercarrier Compensation Costs.***

When our customers use our service to call customers of local exchange carriers, we are required under the current intercarrier compensation scheme to pay the carrier that serves the called party, and any intermediary or transit carrier, for the use of their networks. While in most cases we have been successful in negotiating agreements with other carriers that impose reasonable reciprocal compensation arrangements, some local exchange carriers have claimed a right to unilaterally impose what we believe to be unreasonably high charges on us. Some of these carriers have threatened to pursue, have initiated, or may in the future initiate, claims against us to recover these charges, and the outcome of any such claims is uncertain. The FCC is actively considering possible regulatory approaches to address this situation but we cannot assure you that any FCC action will be beneficial to us. The adoption of adverse FCC rules, regulations or decisions or any FCC inaction could result in carriers successfully collecting higher intercarrier fees from us, which could materially adversely affect our business, financial condition and operating results.

More broadly, the FCC is actively considering whether a unified intercarrier compensation regime can or should be established for all traffic exchanged between all carriers, including commercial mobile radio services carriers. There are also pending appeals of various substantive and procedural aspects of the intercarrier compensation regime in the courts, at the FCC and before state regulatory bodies. New or modified intercarrier compensation rules, if adopted, may increase the charges we are required to pay other carriers for

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terminating calls or transiting calls over their networks, increase the costs of, or make it more difficult to negotiate, new agreements with carriers, decrease the amount of revenue we receive for terminating calls from other carriers on our network, or result in significant costs to us for past and future termination charges. Any of these changes could have a material adverse effect on our business, financial condition and operating results.

We resell third party long distance services in connection with our offering of unlimited international long distance service. The charges for these services may be subject to change by the terminating or interconnecting carrier, or by the regulatory body having jurisdiction in the applicable foreign country. If the charges are modified, the terminating or interconnecting carrier may attempt to assess such charges retroactively on us or our third party international long distance provider. If such charges are substantial, or we cease providing service to the foreign destination, prospective customers may elect not to use our service and current customers may choose to terminate service. Such events could limit our ability to grow our customer base, which could have a material adverse effect on our business, financial condition and operating results.

### ***If We Experience High Rates of Credit Card, Subscription or Dealer Fraud, Our Ability to Generate Cash Flow Will Decrease.***

Our operating costs could increase substantially as a result of fraud, including customer credit card, subscription or dealer fraud. We have implemented a number of strategies and processes to detect and prevent efforts to defraud us, and we believe that our efforts have substantially reduced the types of fraud we have identified. However, if our strategies are not successful in detecting and controlling fraud, the resulting loss of revenue or increased expenses could have a material adverse impact on our financial condition and results of operations.

### ***Our Directors and Affiliated Entities Have Substantial Influence over Our Affairs, and Our Ownership Is Highly Concentrated. Sales of a Significant Number of Shares by Large Stockholders May Adversely Affect the Market Price of Leap Common Stock.***

Our directors and entities affiliated with them beneficially owned in the aggregate approximately 20.9% of Leap common stock as of October 27, 2010. Moreover, our two largest stockholders and entities affiliated with them beneficially owned in the aggregate approximately 30.8% of Leap common stock as of October 27, 2010. These stockholders have the ability to exert substantial influence over all matters requiring approval by our stockholders. These stockholders will be able to influence the election and removal of directors and any merger, consolidation or sale of all or substantially all of Leap's assets and other matters. This concentration of ownership could have the effect of delaying, deferring or preventing a change in control or impeding a merger or consolidation, takeover or other business combination.

Our resale shelf registration statements register for resale 15,537,869 shares of Leap common stock held by entities affiliated with one of our directors, or approximately 19.8% of Leap's outstanding common stock as of October 27, 2010. In addition, in connection with our offering of 7,000,000 shares of Leap common stock in the second quarter of 2009, we agreed to register for resale any additional shares of common stock that these entities or their affiliates may acquire in the future. We are unable to predict the potential effect that sales into the market of any material portion of such shares, or any of the other shares held by our other large stockholders and entities affiliated with them, may have on the then-prevailing market price of Leap common stock. If any of Leap's stockholders cause a large number of securities to be sold in the public market, these sales could reduce the trading price of Leap common stock. These sales could also impede our ability to raise future capital.

## **Risks Related to the Exchange Offer**

### ***You May Have Difficulty Selling the Old Notes You Do Not Exchange.***

If you do not exchange your old notes for new notes in the exchange offer, you will continue to be subject to the restrictions on transfer of your old notes as described in the legend on the global notes representing the old notes. There are restrictions on transfer of your old notes because we issued the old notes under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws. In general, you may only offer or sell the old notes if they are registered under the Securities Act and applicable state securities laws or offered and sold under an exemption from, or in a transaction not subject to, these requirements.

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We do not intend to register any old notes not tendered in the exchange offer and, upon consummation of the exchange offer, you will not be entitled to any rights to have your untendered old notes registered under the Securities Act. In addition, the trading market, if any, for the remaining old notes will be adversely affected depending on the extent to which old notes are tendered and accepted in the exchange offer.

### ***Broker-Dealers May Need to Comply with the Registration and Prospectus Delivery Requirements of the Securities Act.***

Any broker-dealer that (1) exchanges its old notes in the exchange offer for the purpose of participating in a distribution of the new notes or (2) resells new notes that were received by it for its own account in the exchange offer may be deemed to have received restricted securities and will be required to comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction by that broker-dealer. Any profit on the resale of the new notes and any commission or concessions received by a broker-dealer may be deemed to be underwriting compensation under the Securities Act.

### ***You May Not Receive New Notes in the Exchange Offer if the Exchange Offer Procedure Is Not Followed.***

We will issue the new notes in exchange for your old notes only if you tender the old notes and deliver a properly completed and duly executed letter of transmittal and other required documents before the expiration of the exchange offer. You should allow sufficient time to ensure timely delivery of the necessary documents. Neither the exchange agent nor we are under any duty to give notification of defects or irregularities with respect to the tenders of old notes for exchange. If you are the beneficial holder of old notes that are registered in the name of your broker, dealer, commercial bank, trust company or other nominee, and you wish to tender old notes in the exchange offer, you should promptly contact the person in whose name your old notes are registered and instruct that person to tender your old notes on your behalf.

## **Risks Related to the New Notes**

### ***Our Significant Indebtedness Could Adversely Affect Our Financial Health and Prevent Us From Fulfilling Our Obligations.***

We have now and will continue to have a significant amount of indebtedness. As of September 30, 2010, on a pro forma basis after giving effect to the issuance of the old notes and assuming all outstanding 9.375% Senior Notes are repurchased in the Tender Offer or redeemed, our total outstanding indebtedness would have been \$2,806 million, including \$1,200 million of the old notes we are seeking to exchange, \$1,100 million of 7.75% Secured Notes, \$300 million of senior notes due 2015 and \$250 million of convertible senior notes due 2014.

Our significant indebtedness could have material consequences. For example, it could:

- make it more difficult for us to service all of our debt obligations;

- increase our vulnerability to general adverse economic and industry conditions;

- impair our ability to obtain additional financing in the future for working capital needs, capital expenditures, network build-out and other activities, including acquisitions and general corporate purposes;

- require us to dedicate a substantial portion of our cash flows from operations to the payment of principal and interest on our indebtedness, thereby reducing the availability of our cash flows to fund working capital needs, capital expenditures, acquisitions and other general corporate purposes;

limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate; and

place us at a disadvantage compared to our competitors that have less indebtedness.

Any of these risks could impact our ability to fund our operations or limit our ability to expand our business, which could have a material adverse effect on our business, financial condition and results of operations. Furthermore, any significant capital expenditures or increased operating expenses associated with the launch of

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new product or service offerings or operating markets will decrease OIBDA and free cash flow for the periods in which we incur such costs, increasing the risk that we may not be able to service our indebtedness.

***Despite Current Indebtedness Levels, We May Incur Additional Indebtedness. This Could Further Increase the Risks Associated with Our Leverage.***

The terms of the indentures governing Cricket's secured and unsecured senior notes (including the notes) permit us, subject to specified limitations, to incur additional indebtedness, including secured indebtedness. The indenture governing Leap's convertible senior notes does not limit our ability to incur debt.

We may incur additional indebtedness in the future, as market conditions permit, to enhance our liquidity and to provide us with additional flexibility to pursue business expansion efforts, which could consist of debt financing from the public and/or private capital markets. To provide flexibility with respect to any future capital raising alternatives, we have filed a universal shelf registration statement with the SEC to register various debt, equity and other securities, including debt securities, common stock, preferred stock, depository shares, rights and warrants. The securities under this registration statement may be offered from time to time, separately or together, directly by us or through underwriters, at amounts, prices, interest rates and other terms to be determined at the time of any offering.

If new indebtedness is added to our current levels of indebtedness, the related risks that we now face could intensify. In addition, depending on the timing and extent of any additional indebtedness that we could incur, such additional amounts could potentially result in the issuance of adverse credit ratings affecting us and/or our outstanding indebtedness, which could make it more difficult or expensive for us to borrow in the future and could affect the trading prices of any notes we could issue, including the notes.

***We May Make Significant Investments in Designated Entities and Other Joint Ventures That Are Not Guarantors of the Notes and May Not Be Restricted by the Covenants in the Indentures Governing Cricket's Secured and Unsecured Senior Notes.***

The terms of the indentures governing Cricket's secured and unsecured senior notes (including the notes) permit us, subject to specified limitations and conditions, to make significant investments in designated entities and other joint venture entities, including investments in Denali and STX Wireless and proposed future investments in Savary Island. These entities are not guarantors of any of the notes and our designated entity investments are not restricted by the covenants in the indenture governing the notes. Any such investments may affect our ability to satisfy our obligations with respect to the notes.

***To Service Our Indebtedness and Fund Our Working Capital and Capital Expenditures, We Will Require a Significant Amount of Cash. Our Ability to Generate Cash Depends on Many Factors Beyond Our Control.***

Our ability to make payments on our indebtedness will depend upon our future operating performance and on our ability to generate cash flow in the future, which are subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. We cannot assure you that our business will generate sufficient cash flow from operations, or that future financing will be available to us, in an amount sufficient to enable us to repay or service our indebtedness or to fund our other liquidity needs or at all. If the cash flow from our operating activities is insufficient for these purposes, we may take actions, such as delaying or reducing capital expenditures, attempting to restructure or refinance our indebtedness prior to maturity, selling assets or operations or seeking additional equity capital. Any or all of these actions may be insufficient to allow us to service our debt obligations. Further, we may be unable to take any of these actions on commercially reasonable terms, or at all.

***We May Be Unable to Refinance Our Indebtedness.***



We may need to refinance all or a portion of our indebtedness before maturity of the notes, including indebtedness under the indentures governing our other secured and unsecured senior notes and convertible senior notes. Our \$250 million of unsecured convertible senior notes is due in 2014, our \$300 million of 10.0% unsecured senior notes is due in 2015 and our \$1,100 million of 7.75% Secured Notes is due in 2016. There can be no assurance

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that we will be able to obtain sufficient funds to enable us to repay or refinance any of our indebtedness on commercially reasonable terms or at all.

***Covenants in Our Indentures and Credit Agreements or Indentures That We May Enter into in the Future May Limit Our Ability to Operate Our Business.***

The indentures governing Cricket's secured and unsecured senior notes (including the notes) contain covenants that restrict the ability of Leap, Cricket and their restricted subsidiaries to make distributions or other payments to our investors or subordinated creditors unless we satisfy certain financial tests or other criteria. In addition, these indentures include covenants restricting, among other things, the ability of Leap, Cricket and their restricted subsidiaries to:

incur additional indebtedness;

create liens or other encumbrances;

place limitations on distributions from restricted subsidiaries;

pay dividends, make investments, prepay subordinated indebtedness or make other restricted payments;

issue or sell capital stock of restricted subsidiaries;

issue guarantees;

sell or otherwise dispose of all or substantially all of our assets;

enter into transactions with affiliates; and

make acquisitions or merge or consolidate with another entity.

The restrictions in the indentures governing Cricket's secured and unsecured senior notes could limit our ability to make borrowings, obtain debt financing, repurchase stock, refinance or pay principal or interest on our outstanding indebtedness, complete acquisitions for cash or debt or react to changes in our operating environment. Any credit agreement or indenture that we may enter into in the future may have similar or more onerous restrictions.

Under the indentures governing our secured and unsecured senior notes and convertible senior notes, if certain change of control events occur, each holder of notes may require us to repurchase all of such holder's notes at a purchase price equal to 101% of the principal amount of secured or unsecured senior notes, or 100% of the principal amount of convertible senior notes, plus accrued and unpaid interest.

If we default under any of the indentures governing our secured or unsecured senior notes or convertible senior notes because of a covenant breach or otherwise, all outstanding amounts thereunder could become immediately due and payable. Our failure to timely file our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2007 constituted a default under the indenture governing our 9.375% Senior Notes. We cannot assure you that we will be able to obtain a waiver should a default occur in the future. Any acceleration of amounts due would have a material adverse effect on our liquidity and financial condition, and we cannot assure you that we would have sufficient funds to repay all of the outstanding amounts under the indentures governing our secured and unsecured senior notes and convertible senior notes.

***Leap's Guarantee Provides Little, If Any, Additional Credit Support for the Notes.***

Leap's sole source of operating income and cash flow is currently derived from Cricket and its only material asset is Cricket capital stock. As a result, Leap's guarantee provides little, if any, additional credit support for the notes.

**Table of Contents*****We May Not Have the Ability to Raise the Funds Necessary to Finance the Change of Control Offer Required by the Indentures.***

If we experience certain specific kinds of change of control events (which events include the acquisition of beneficial ownership of 35% or more of Leap's voting securities (other than, in the case of the indentures governing the 7.75% Secured Notes and the notes, by a holding company in which no person or group has 35% or more beneficial ownership), a sale of all or substantially all of the assets of Leap and its restricted subsidiaries, and a change in a majority of the members of Leap's board of directors that is not approved by the board), we will be required to offer to repurchase all of our outstanding unsecured senior notes (including the notes), convertible senior notes and senior secured notes at 101% of the principal amount of such unsecured senior notes and senior secured notes, or 100% of the principal amount of convertible senior notes, plus accrued and unpaid interest and additional interest, if any, thereon, to the date of repurchase. We cannot assure you that we will have available funds sufficient to repurchase such unsecured senior notes, convertible senior notes and senior secured notes and satisfy other payment obligations that could be triggered upon a change of control. If we do not have sufficient financial resources to effect a change of control offer, we would be required to seek additional financing from outside sources to repurchase the notes. We cannot assure you that financing would be available to us on satisfactory terms, or at all. In addition, certain important corporate events, such as leveraged recapitalizations that would increase the level of our indebtedness, would not constitute a Change of Control under the indentures governing our outstanding unsecured senior notes, convertible senior notes and senior secured notes. See Description of New Notes Repurchase at the Option of Holders Change of Control .

The definition of change of control in the indentures includes a phrase relating to the direct or indirect sale, transfer, conveyance or other disposition of all or substantially all of our and our restricted subsidiaries' assets, taken as a whole. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a holder of notes to require us to repurchase such notes as a result of a sale, transfer, conveyance or other disposition of less than all of our and our restricted subsidiaries' assets taken as a whole to another person or group may be uncertain. In addition, a recent Delaware Chancery Court decision raised questions about the enforceability of provisions, which are similar to those in the indentures governing our notes (including the notes), related to the triggering of a change of control as a result of a change in the composition of a board of directors. Accordingly, the ability of a holder of notes to require us to repurchase notes as a result of a change in the composition of directors on the board of Cricket or Leap may be uncertain.

***Federal and State Statutes Allow Courts, under Specific Circumstances, to Void Guarantees and Require Noteholders to Return Payments Received from Us or the Guarantors.***

Cricket's creditors or the creditors of the guarantors of the notes could challenge the guarantees as fraudulent conveyances or on other grounds. Under federal bankruptcy law and comparable provisions of state fraudulent transfer laws, the delivery of the guarantees could be found to be a fraudulent transfer and declared void if a court determined that the guarantor, at the time it incurred the indebtedness evidenced by its guarantee (1) delivered the guarantee with the intent to hinder, delay or defraud its existing or future creditors; or (2) received less than reasonably equivalent value or did not receive fair consideration for the delivery of the guarantee and any of the following three conditions apply:

the guarantor was insolvent or rendered insolvent by reason at the time it delivered the guarantee;

the guarantor was engaged in a business or transaction for which the guarantor's remaining assets constituted unreasonably small capital; or

the guarantor intended to incur, or believed that it would incur, debts beyond its ability to pay such debts at maturity.

In addition, any payment by that guarantor pursuant to its guarantee could be voided and required to be returned to the guarantor, or to a fund for the benefit of the creditors of the guarantor. In any such case, your right to receive payments in respect of the notes from any such guarantor would be effectively subordinated to all indebtedness and other liabilities of that guarantor.

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If a court declares the guarantees to be void, or if the guarantees must be limited or voided in accordance with their terms, any claim you may make against us for amounts payable on the notes would, with respect to amounts claimed against the guarantors, be subordinated to the indebtedness of our guarantors, including trade payables. The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, a guarantor would be considered insolvent if:

the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all of its assets;

if the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or

it could not pay its debts as they become due.

On the basis of historical financial information, recent operating history and other factors, we believe that each guarantor, after giving effect to its guarantee of the notes, will not be insolvent, will not have unreasonably small capital for the business in which it is engaged and will not have incurred debts beyond its ability to pay such debts as they mature. We cannot assure you, however, as to what standard a court would apply in making these determinations or that a court would agree with our conclusions in this regard.

***Claims of Secured Creditors Will Have Priority with respect to Their Security Over the Claims of Unsecured Creditors, Such as the Holders of the Notes.***

Claims of our and the guarantors' secured creditors, including the holders of the 7.75% Secured Notes, will have priority with respect to the assets securing their indebtedness over the claims of holders of the notes to the extent of the value of the assets securing such other indebtedness. The notes and the guarantees will be effectively subordinated to all such secured indebtedness. In the event of any distribution or payment of our assets in any foreclosure, dissolution, winding-up, liquidation, reorganization, administration or other bankruptcy or insolvency proceeding, holders of secured indebtedness will have prior claims to our assets that constitute their collateral. Holders of the notes will participate ratably with all holders of our unsecured indebtedness that is deemed to be of the same class as the notes and the guarantees, and potentially with all of our other general creditors, based upon the respective amounts owed to each holder or creditor, in our remaining assets. In the event that any of our or the guarantors' secured indebtedness becomes due or the holders thereof proceed against the assets that secure the indebtedness, our and the guarantors' assets remaining after payment of that secured indebtedness might not be sufficient to repay all amounts owing in respect of the notes. As a result, holders of the notes may receive less, ratably, than holders of secured indebtedness, to the extent of the value of the property and assets securing such indebtedness. We may be permitted to borrow substantial additional indebtedness, including secured debt, in the future under the terms of the indentures governing Cricket's secured and unsecured senior notes (including the notes).

***If an Active Trading Market for the New Notes Does Not Develop, the Liquidity and Value of the New Notes Could Be Decreased.***

Prior to the exchange offer, there was no public market for the new notes and we cannot assure you that an active trading market will develop for the new notes. If an active trading market does not develop, you may not be able to resell your notes at their fair market value or at all. Future trading prices of the new notes will depend on many factors, including, among other things, prevailing interest rates, our operating results and the market for similar securities. We do not intend to apply for listing the new notes on any securities exchange.

***An Adverse Rating of the New Notes May Cause Their Trading Price to Fall.***

If a rating agency rates the new notes, it may assign a rating that is lower than the ratings assigned to our other debt. Ratings agencies also may lower ratings on the new notes or our other debt in the future. If rating agencies assign a lower-than-expected rating or reduce, or indicate that they may reduce, their ratings of our debt in the future, the trading price of the new notes could significantly decline.

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**THE EXCHANGE OFFER**

**Purpose and Effect of the Exchange Offer**

In connection with the sale of the old notes, we entered into a registration rights agreement with the initial purchasers of the old notes, pursuant to which we agreed to file and to use our reasonable best efforts to cause to be declared effective by the SEC a registration statement with respect to the exchange of the old notes for the new notes. We are making the exchange offer to fulfill our contractual obligations under that agreement. A copy of the registration rights agreement has been filed as an exhibit to the registration statement of which this prospectus is a part.

Pursuant to the exchange offer, we will issue the new notes in exchange for old notes. The terms of the new notes are identical in all material respects to those of the old notes, except that the new notes (1) have been registered under the Securities Act and therefore will not be subject to certain restrictions on transfer applicable to the old notes and (2) will not have registration rights or provide for any increase in the interest rate related to the obligation to register. See [Description of New Notes](#) and [Description of Old Notes](#) for more information on the terms of the respective notes and the differences between them.

We are not making the exchange offer to, and will not accept tenders for exchange from, holders of old notes in any jurisdiction in which an exchange offer or the acceptance thereof would not be in compliance with the securities or blue sky laws of such jurisdiction. Unless the context requires otherwise, the term [holder](#) means any person in whose name the old notes are registered on our books or any other person who has obtained a properly completed bond power from the registered holder, or any person whose old notes are held of record by The Depository Trust Company, or DTC, who desires to deliver such old notes by book-entry transfer at DTC.

We make no recommendation to the holders of old notes as to whether to tender or refrain from tendering all or any portion of their old notes pursuant to the exchange offer. In addition, no one has been authorized to make any such recommendation. Holders of old notes must make their own decision whether to tender pursuant to the exchange offer and, if so, the aggregate amount of old notes to tender after reading this prospectus and the letter of transmittal and consulting with their advisers, if any, based on their own financial position and requirements.

**Terms of the Exchange**

Upon the terms and conditions described in this prospectus and in the accompanying letter of transmittal, which together constitute the exchange offer, we will accept for exchange old notes which are properly tendered at or before the expiration time and not withdrawn as permitted below. As of the date of this prospectus, \$1,200 million aggregate principal amount of old notes are outstanding. This prospectus, together with the letter of transmittal, is first being sent on or about the date on the cover page of the prospectus to all holders of old notes known to us. Old notes tendered in the exchange offer must be in denominations of principal amount of \$2,000 and any integral multiples of \$1,000 in excess thereof.

Our acceptance of the tender of old notes by a tendering holder will form a binding agreement between the tendering holder and us upon the terms and subject to the conditions provided in this prospectus and in the accompanying letter of transmittal.

**Expiration, Extension and Amendment**



The expiration time of the exchange offer is 5:00 p.m. New York City time on January 14, 2011. However, we may, in our sole discretion, extend the period of time for which the exchange offer is open and set a later expiration date. The term "expiration time" as used herein means the latest time and date to which we extend the exchange offer. If we decide to extend the exchange offer period, we will then delay acceptance of any old notes by giving oral or written notice of an extension to the holders of old notes as described below. During any extension period, all old notes previously tendered will remain subject to the exchange offer and may be accepted for exchange by us. Any old notes not accepted for exchange will be returned to the tendering holder after the expiration or termination of the exchange offer.

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Our obligation to accept old notes for exchange in the exchange offer is subject to the conditions described below under **Conditions to the Exchange Offer**. We may decide to waive any of the conditions in our discretion. Furthermore, we reserve the right to amend or terminate the exchange offer, and not to accept for exchange any old notes not previously accepted for exchange, upon the occurrence of any of the conditions of the exchange offer specified below under the same heading. We will give oral or written notice of any extension, amendment, non-acceptance or termination to the holders of the old notes as promptly as practicable. If we materially change the terms of the exchange offer, we will resolicit tenders of the old notes, file a post-effective amendment to the prospectus and provide notice to you. If the change is made less than five business days before the expiration of the exchange offer, we will extend the offer so that the holders have at least five business days to tender or withdraw. We will notify you of any extension by means of a press release or other public announcement no later than January 18, 2011, the first business day after the previously scheduled expiration time.

## **Procedures for Tendering**

### ***Valid Tender***

Except as described below, a tendering holder must, prior to the expiration time, transmit to Wells Fargo Bank, National Association, the exchange agent, at the address listed under the heading **Exchange Agent** :

a properly completed and duly executed letter of transmittal, including all other documents required by the letter of transmittal; or

if old notes are tendered in accordance with the book-entry procedures listed below, an agent's message.

In addition, a tendering holder must:

deliver certificates, if any, for the old notes to the exchange agent at or before the expiration time; or

deliver a timely confirmation of book-entry transfer of the old notes into the exchange agent's account at DTC, the book-entry transfer facility, along with the letter of transmittal or an agent's message; or

comply with the guaranteed delivery procedures described below.

The term **agent's message** means a message, transmitted by DTC to and received by the exchange agent and forming a part of a book-entry confirmation, that states that DTC has received an express acknowledgment that the tendering holder agrees to be bound by the letter of transmittal and that we may enforce the letter of transmittal against this holder.

If the letter of transmittal is signed by a person other than the registered holder of old notes, the letter of transmittal must be accompanied by a written instrument of transfer or exchange in satisfactory form duly executed by the registered holder with the signature guaranteed by an eligible institution. The old notes must be endorsed or accompanied by appropriate powers of attorney. In either case, the old notes must be signed exactly as the name of any registered holder appears on the old notes.

If the letter of transmittal or any old notes or powers of attorney are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, these persons should so indicate when signing. Unless waived by us, proper evidence satisfactory to us of their authority to so act must be submitted.

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By tendering old notes pursuant to the exchange offer, each holder will represent to us that, among other things, the new notes are being acquired in the ordinary course of business of the person receiving the new notes, whether or not that person is the holder, and neither the holder nor the other person has any arrangement or understanding with any person to participate in the distribution of the new notes. In the case of a holder that is not a broker-dealer, that holder, by tendering old notes pursuant to the exchange offer, will also represent to us that the holder is not engaged in and does not intend to engage in a distribution of the new notes.

The method of delivery of old notes, letters of transmittal and all other required documents is at your election and risk. If the delivery is by mail, we recommend that you use registered mail, properly insured, with return receipt

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requested. In all cases, you should allow sufficient time to assure timely delivery. You should not send letters of transmittal or old notes to us.

If you are a beneficial owner whose old notes are registered in the name of a broker, dealer, commercial bank, trust company or other nominee, and wish to tender, you should promptly instruct the registered holder to tender on your behalf. Any registered holder that is a participant in DTC's book-entry transfer facility system may make book-entry delivery of the old notes by causing DTC to transfer the old notes into the exchange agent's account, including by means of DTC's Automated Tender Offer Program.

### ***Signature Guarantees***

Signatures on a letter of transmittal or a notice of withdrawal must be guaranteed, unless the old notes surrendered for exchange are tendered:

by a registered holder of the old notes who has not completed the box entitled "Special Issuance Instructions" or "Special Delivery Instructions" on the letter of transmittal, or

for the account of an eligible institution.

If signatures on a letter of transmittal or a notice of withdrawal are required to be guaranteed, the guarantees must be by an eligible institution. An eligible institution is an eligible guarantor institution meeting the requirements of the registrar for the notes, which requirements include membership or participation in the Securities Transfer Agents Medallion Program, or STAMP, or such other signature guarantee program as may be determined by the registrar for the notes in addition to, or in substitution for, STAMP, all in accordance with the Exchange Act.

### ***Book-Entry Transfer***

The exchange agent will make a request to establish an account for the old notes at DTC for purposes of the exchange offer within two business days after the date of this prospectus. Any financial institution that is a participant in DTC's systems must make book-entry delivery of old notes by causing DTC to transfer those old notes into the exchange agent's account at DTC in accordance with DTC's procedure for transfer. The participant should transmit its acceptance to DTC at or prior to the expiration time or comply with the guaranteed delivery procedures described below. DTC will verify this acceptance, execute a book-entry transfer of the tendered old notes into the exchange agent's account at DTC and then send to the exchange agent confirmation of this book-entry transfer. The confirmation of this book-entry transfer will include an agent's message confirming that DTC has received an express acknowledgment from this participant that this participant has received and agrees to be bound by the letter of transmittal and that we may enforce the letter of transmittal against this participant.

Delivery of new notes issued in the exchange offer may be effected through book-entry transfer at DTC. However, the letter of transmittal or facsimile of it or an agent's message, with any required signature guarantees and any other required documents, must:

be transmitted to and received by the exchange agent at the address listed under "Exchange Agent" at or prior to the expiration time; or

comply with the guaranteed delivery procedures described below.

Delivery of documents to DTC in accordance with DTC's procedures does not constitute delivery to the exchange agent.

***Guaranteed Delivery***

If a registered holder of old notes desires to tender the old notes, and the old notes are not immediately available, or time will not permit the holder's old notes or other required documents to reach the exchange agent before the expiration time, or the procedure for book-entry transfer described above cannot be completed on a timely basis, a tender may nonetheless be made if:

the tender is made through an eligible institution;

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prior to the expiration time, the exchange agent received from an eligible institution a properly completed and duly executed notice of guaranteed delivery, substantially in the form provided by us, by facsimile transmission, mail or hand delivery:

1. stating the name and address of the holder of old notes and the amount of old notes tendered;
2. stating that the tender is being made; and
3. guaranteeing that within three New York Stock Exchange trading days after the expiration time, the certificates for all physically tendered old notes, in proper form for transfer, or a book-entry confirmation, as the case may be, and a properly completed and duly executed letter of transmittal, or an agent's message, and any other documents required by the letter of transmittal will be deposited by the eligible institution with the exchange agent; and

the certificates for all physically tendered old notes, in proper form for transfer, or a book-entry confirmation, as the case may be, and a properly completed and duly executed letter of transmittal, or an agent's message, and all other documents required by the letter of transmittal, are received by the exchange agent within three New York Stock Exchange trading days after the expiration time.

***Determination of Validity***

We will determine in our sole discretion all questions as to the validity, form and eligibility of old notes tendered for exchange. This discretion extends to the determination of all questions concerning the timing of receipts and acceptance of tenders. These determinations will be final and binding. We reserve the right to reject any particular old note not properly tendered or of which our acceptance might, in our judgment or our counsel's judgment, be unlawful. We also reserve the right to waive any defects or irregularities or conditions of the exchange offer as to any particular old note either before or after the expiration time, including the right to waive the ineligibility of any tendering holder. Our interpretation of the terms and conditions of the exchange offer as to any particular old note either before or after the expiration time, including the letter of transmittal and the instructions to the letter of transmittal, shall be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of old notes must be cured within a reasonable period of time.

Neither we, the exchange agent nor any other person will be under any duty to give notification of any defect or irregularity in any tender of old notes. Moreover, neither we, the exchange agent nor any other person will incur any liability for failing to give notification of any defect or irregularity.

**Acceptance of Old Notes for Exchange; Issuance of New Notes**

Upon the terms and subject to the conditions of the exchange offer, we will accept, promptly after the expiration time, all old notes properly tendered. We will issue the new notes promptly after acceptance of the old notes. For purposes of the exchange offer, we will be deemed to have accepted properly tendered old notes for exchange when, as and if we have given oral or written notice to the exchange agent, with prompt written confirmation of any oral notice.

In all cases, issuance of new notes for old notes will be made only after timely receipt by the exchange agent of:

certificates for the old notes, or a timely book-entry confirmation of the old notes, into the exchange agent's account at the book-entry transfer facility;

a properly completed and duly executed letter of transmittal or an agent's message; and

all other required documents.

Unaccepted or non-exchanged old notes will be returned without expense to the tendering holder of the old notes. In the case of old notes tendered by book-entry transfer in accordance with the book-entry procedures described above, the non-exchanged old notes will be credited to an account maintained with DTC as promptly as practicable after the expiration or termination of the exchange offer. For each old note accepted for exchange, the holder of the old note will receive a new note having a principal amount equal to that of the surrendered old note.

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### **Interest Payments on the New Notes**

The new notes will bear interest from the date of original issuance of the old notes or, if interest has already been paid on the old notes, from the date interest was most recently paid. Accordingly, registered holders of new notes on the relevant record date for the first interest payment date following the completion of the exchange offer will receive interest accruing from the most recent date through which interest has been paid. Old notes accepted for exchange will cease to accrue interest from and after the date of completion of the exchange offer. Holders of old notes whose old notes are accepted for exchange will not receive any payment for accrued interest on the old notes otherwise payable on any interest payment date the record date for which occurs on or after completion of the exchange offer and will be deemed to have waived their rights to receive the accrued interest on the old notes.

### **Withdrawal Rights**

Tenders of old notes may be withdrawn at any time before the expiration time.

For a withdrawal to be effective, the exchange agent must receive a written notice of withdrawal at the address or, in the case of eligible institutions, at the facsimile number, indicated under Exchange Agent before the expiration time. Any notice of withdrawal must:

specify the name of the person, referred to as the depositor, having tendered the old notes to be withdrawn;

identify the old notes to be withdrawn, including the certificate number or numbers and principal amount of the old notes;

contain a statement that the holder is withdrawing its election to have the old notes exchanged;

be signed by the holder in the same manner as the original signature on the letter of transmittal by which the old notes were tendered, including any required signature guarantees, or be accompanied by documents of transfer to have the trustee with respect to the old notes register the transfer of the old notes in the name of the person withdrawing the tender; and

specify the name in which the old notes are registered, if different from that of the depositor.

If certificates for old notes have been delivered or otherwise identified to the exchange agent, then, prior to the release of these certificates the withdrawing holder must also submit the serial numbers of the particular certificates to be withdrawn and signed notice of withdrawal with signatures guaranteed by an eligible institution, unless this holder is an eligible institution. If old notes have been tendered in accordance with the procedure for book-entry transfer described above, any notice of withdrawal must specify the name and number of the account at the book-entry transfer facility to be credited with the withdrawn old notes.

Any old notes properly withdrawn will be deemed not to have been validly tendered for exchange. New notes will not be issued in exchange unless the old notes so withdrawn are validly re-tendered. Properly withdrawn old notes may be re-tendered by following the procedures described under Procedures for Tendering above at any time at or before the expiration time.

We will determine all questions as to the validity, form and eligibility, including time of receipt, of notices of withdrawal.

### **Conditions to the Exchange Offer**



Notwithstanding any other provisions of the exchange offer, or any extension of the exchange offer, we will not be required to accept for exchange, or to exchange, any old notes for any new notes, and, as described below, may terminate the exchange offer, whether or not any old notes have been accepted for exchange, or may waive any conditions to or amend the exchange offer, if any of the following conditions has occurred or exists:

there shall occur a change in the current interpretation by the staff of the SEC, which now permits the new notes issued pursuant to the exchange offer in exchange for old notes to be offered for resale, resold and otherwise transferred by the holders (other than broker-dealers and any holder which is an affiliate) without compliance with the registration and prospectus delivery provisions of the Securities Act, provided that such

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new notes are acquired in the ordinary course of such holders' business and such holders have no arrangement or understanding with any person to participate in the distribution of the new notes;

any action or proceeding shall have been instituted or threatened in any court or by or before any governmental agency or body with respect to the exchange offer which, in our judgment, would reasonably be expected to impair our ability to proceed with the exchange offer;

any law, statute, rule or regulation shall have been adopted or enacted which, in our judgment, would reasonably be expected to impair our ability to proceed with the exchange offer;

a banking moratorium shall have been declared by United States federal or New York State authorities which, in our judgment, would reasonably be expected to impair our ability to proceed with the exchange offer;

trading on the New York Stock Exchange or generally in the United States over-the-counter market shall have been suspended by order of the SEC or any other governmental authority which, in our judgment, would reasonably be expected to impair our ability to proceed with the exchange offer;

an attack on the United States, an outbreak or escalation of hostilities or acts of terrorism involving the United States, or any declaration by the United States of a national emergency or war shall have occurred;

a stop order shall have been issued by the SEC or any state securities authority suspending the effectiveness of the registration statement of which this prospectus is a part or proceedings shall have been initiated or, to our knowledge, threatened for that purpose or any governmental approval has not been obtained, which approval we shall, in our sole discretion, deem necessary for the consummation of the exchange offer; or

any change, or any development involving a prospective change, in our business or financial affairs or any of our subsidiaries has occurred which is or may be adverse to us or we shall have become aware of facts that have or may have an adverse impact on the value of the old notes or the new notes, which in our reasonable judgment in any case makes it inadvisable to proceed with the exchange offer and/or with the acceptance for exchange or with the exchange.

If we determine in our sole discretion that any of the foregoing events or conditions has occurred or exists, we may, subject to applicable law, terminate the exchange offer, whether or not any old notes have been accepted for exchange, or may waive any such condition or otherwise amend the terms of the exchange offer in any respect. See "Expiration, Extension and Amendment" above.

**Resales of New Notes**

Based on interpretations by the staff of the SEC, as described in no-action letters issued to third parties, we believe that new notes issued in the exchange offer in exchange for old notes may be offered for resale, resold or otherwise transferred by holders of the old notes without compliance with the registration and prospectus delivery provisions of the Securities Act, if:

the new notes are acquired in the ordinary course of the holders' business;

the holders have no arrangement or understanding with any person to participate in the distribution of the new notes; and

the holders are not "affiliates" of ours within the meaning of Rule 405 under the Securities Act.

However, the SEC has not considered the exchange offer described in this prospectus in the context of a no-action letter. We cannot assure you that the staff of the SEC would make a similar determination with respect to the exchange offer as in the other circumstances. Each holder who wishes to exchange old notes for new notes will be required to represent that it meets the above three requirements.

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Any holder who is an affiliate of ours or who intends to participate in the exchange offer for the purpose of distributing new notes or any broker-dealer who purchased old notes directly from us to resell pursuant to Rule 144A or any other available exemption under the Securities Act:

may not rely on the applicable interpretations of the staff of the SEC mentioned above;

will not be permitted or entitled to tender the old notes in the exchange offer; and

must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction.

Each broker-dealer that receives new notes for its own account in exchange for old notes, where such securities were acquired by such broker-dealer as a result of market making activities or other trading activities, must acknowledge that it will deliver a prospectus that meets the requirements of the Securities Act in connection with any resale of the new notes. The letter of transmittal states that by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act. See Plan of Distribution. In addition, to comply with state securities laws, the new notes may not be offered or sold in any state unless they have been registered or qualified for sale in such state or an exemption from registration or qualification, with which there has been compliance, is available. The offer and sale of the new notes to qualified institutional buyers, as defined under Rule 144A of the Securities Act, is generally exempt from registration or qualification under the state securities laws. We currently do not intend to register or qualify the sale of new notes in any state where an exemption from registration or qualification is required and not available.

**Exchange Agent**

Wells Fargo Bank, National Association has been appointed as the exchange agent for the exchange offer. All executed letters of transmittal and any other required documents should be directed to the exchange agent at the address or facsimile number set forth below. Questions and requests for assistance, requests for additional copies of this prospectus or of the letter of transmittal and requests for notices of guaranteed delivery should be directed to the exchange agent addressed as follows:

**WELLS FARGO BANK, NATIONAL ASSOCIATION  
AS EXCHANGE AGENT**

**By registered mail or certified  
mail:**

Wells Fargo Bank, N.A.  
MAC N9303-121  
Corporate Trust Operations  
P.O. Box 1517  
Minneapolis, MN 55480-1517

**By regular mail or overnight  
courier:**

Wells Fargo Bank, N.A.  
MAC - N9303-121  
Corporate Trust Operations  
Sixth Street & Marquette Avenue  
Minneapolis, MN 55479

**By hand:**

Wells Fargo Bank, N.A.  
Northstar East Building  
12<sup>th</sup> floor  
Corporate Trust Services  
608 Second Avenue South  
Minneapolis, Minnesota 55402

Facsimile (eligible institutions only): (612) 667-6282

Telephone Inquiries: (800) 344-5128

**Delivery of the letter of transmittal to an address other than as set forth above or transmission of the letter of transmittal via a facsimile transmission to a number other than as set forth above will not constitute a valid**

**delivery of the letter of transmittal. Delivery of documents to The Depository Trust Company does not constitute delivery to the exchange agent.**

**Regulatory Approval**

Other than the federal securities laws, there are no federal or state regulatory requirements that we must comply with and there are no approvals that we must obtain in connection with the exchange offer.

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**Fees and Expenses**

We have agreed to pay the exchange agent reasonable and customary fees for its services and will reimburse it for its reasonable out-of-pocket expenses in connection with the exchange offer. We will also pay brokerage houses and other custodians, nominees and fiduciaries the reasonable out-of-pocket expenses incurred by them in forwarding copies of this prospectus and related documents to the beneficial owners of old notes, and in handling or tendering for their customers. We will not make any payment to brokers, dealers or others soliciting acceptances of the exchange offer.

Holders who tender their old notes for exchange will not be obligated to pay any transfer taxes on the exchange. If, however, new notes are to be delivered to, or are to be issued in the name of, any person other than the registered holder of the old notes tendered, or if a transfer tax is imposed for any reason other than the exchange of old notes in connection with the exchange offer, then the amount of any such transfer taxes (whether imposed on the registered holder or any other persons) will be payable by the tendering holder. If satisfactory evidence of payment of such taxes or exemption therefrom is not submitted with the letter of transmittal, the amount of such transfer taxes will be billed directly to such tendering holder.

**Accounting Treatment**

We will record the new notes at the same carrying value as the old notes, as reflected in our accounting records on the date of the exchange. Accordingly, we will not recognize any gain or loss for accounting purposes. The expenses of the exchange offer will be amortized over the term of the new notes.

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**USE OF PROCEEDS**

We will not receive proceeds from the issuance of the new notes offered hereby. In consideration for issuing the new notes in exchange for old notes as described in this prospectus, we will receive old notes of like principal amount. The old notes surrendered in exchange for the new notes will be retired and canceled.

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**DESCRIPTION OF OTHER INDEBTEDNESS**

**9.375% Senior Notes Due 2014**

In 2006, Cricket issued \$750 million of 9.375% Senior Notes in a private placement to institutional buyers, which were exchanged in 2007 for identical notes that had been registered with the SEC. In June 2007, Cricket issued an additional \$350 million of 9.375% Senior Notes in a private placement to institutional buyers at an issue price of 106% of the principal amount, which were exchanged in June 2008 for identical notes that had been registered with the SEC. These notes are all treated as a single class and have identical terms. The \$21 million premium we received in connection with the issuance of the second tranche of 9.375% Senior Notes has been recorded in long-term debt in the condensed consolidated financial statements and is being amortized as a reduction to interest expense over the term of the notes using the effective interest rate method. At September 30, 2010, the effective interest rate on the \$350 million of 9.375% Senior Notes was 9.04%, which includes the effect of the premium amortization.

The 9.375% Senior Notes bear interest at the rate of 9.375% per year, payable semi-annually in cash in arrears, which interest payments commenced in May 2007. The 9.375% Senior Notes are guaranteed on an unsecured senior basis by Leap and each of its existing and future domestic subsidiaries (other than Cricket, which is the issuer of the notes, and LCW Wireless, Denali and STX Wireless and their respective subsidiaries) that guarantee indebtedness for money borrowed of Leap, Cricket or any subsidiary guarantor. The 9.375% Senior Notes and the guarantees are Leap's, Cricket's and the guarantors' general senior unsecured obligations and rank equally in right of payment with all of Leap's, Cricket's and the guarantors' existing and future unsubordinated unsecured indebtedness. The 9.375% Senior Notes and the guarantees are effectively junior to Leap's, Cricket's and the guarantors' existing and future secured obligations, including those under the 7.75% Secured Notes, to the extent of the value of the assets securing such obligations, as well as to existing and future liabilities of Leap's and Cricket's subsidiaries that are not guarantors (including LCW Wireless and STX Wireless) and of Denali and its respective subsidiaries. In addition, the 9.375% Senior Notes and the guarantees are senior in right of payment to any of Leap's, Cricket's and the guarantors' future subordinated indebtedness.

The 9.375% Senior Notes may be redeemed, in whole or in part, at any time on or after November 1, 2010, at a redemption price of 104.688% and 102.344% of the principal amount thereof if redeemed during the twelve months beginning on November 1, 2010 and 2011, respectively, or at 100% of the principal amount if redeemed during the twelve months beginning on November 1, 2012 or thereafter, plus accrued and unpaid interest, if any, thereon to the redemption date.

If a change of control occurs (which includes the acquisition of beneficial ownership of 35% or more of Leap's equity securities, a sale of all or substantially all of the assets of Leap and its restricted subsidiaries and a change in a majority of the members of Leap's board of directors that is not approved by the board), each holder of the 9.375% Senior Notes may require Cricket to repurchase all of such holder's notes at a purchase price equal to 101% of the principal amount of the notes, plus accrued and unpaid interest, if any, thereon to the repurchase date.

The indenture governing the 9.375% Senior Notes limits, among other things, our ability to: incur additional debt; create liens or other encumbrances; place limitations on distributions from restricted subsidiaries; pay dividends; make investments; prepay subordinated indebtedness or make other restricted payments; issue or sell capital stock of restricted subsidiaries; issue guarantees; sell assets; enter into transactions with our affiliates; and make acquisitions or merge or consolidate with another entity.



On November 4, 2010, we commenced the Tender Offer for any and all of the \$1.1 billion outstanding principal amount of the 9.375% Senior Notes. On November 19, 2010, we accepted tenders for \$915,828,000 in aggregate principal amount of outstanding 9.375% Senior Notes in connection with the early acceptance date of the Tender Offer. The holders of the accepted notes received total consideration of \$1,050.63 per \$1,000 principal amount of notes tendered, which included a \$20 consent payment per \$1,000 principal amount of notes tendered. The total cash payment to purchase the tendered 9.375% Senior Notes on the early acceptance date, including accrued and unpaid interest up to, but excluding, November 19, 2010, was approximately \$996.49 million, which we obtained from the closing of the private offering of the old notes. The Tender Offer expired at midnight, New York City time, on December 3, 2010. On November 19, 2010, we issued a notice of redemption to redeem any untendered

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9.375% Senior Notes at a price of 104.688% of the principal amount thereof, plus accrued and unpaid interest to, but not including, the redemption date, in accordance with the indenture governing the 9.375% Senior Notes.

**Convertible Senior Notes Due 2014**

In June 2008, Leap issued \$250 million of unsecured convertible senior notes due 2014 in a private placement to institutional buyers. The convertible notes bear interest at the rate of 4.50% per year, payable semi-annually in cash in arrears, which interest payments commenced in January 2009. The convertible notes are Leap's general unsecured obligations and rank equally in right of payment with all of Leap's existing and future senior unsecured indebtedness and senior in right of payment to all indebtedness that is contractually subordinated to the convertible notes. The convertible notes are structurally subordinated to the existing and future claims of Leap's subsidiaries' creditors, including under the secured and unsecured senior notes described above and below. The convertible notes are effectively junior to all of Leap's existing and future secured obligations, including those under the 7.75% Secured Notes, to the extent of the value of the assets securing such obligations.

Holders may convert their convertible notes into shares of Leap common stock at any time on or prior to the third scheduled trading day prior to the maturity date of the convertible notes, July 15, 2014. If, at the time of conversion, the applicable stock price of Leap common stock is less than or equal to approximately \$93.21 per share, the convertible notes will be convertible into 10.7290 shares of Leap common stock per \$1,000 principal amount of the convertible notes (referred to as the base conversion rate), subject to adjustment upon the occurrence of certain events. If, at the time of conversion, the applicable stock price of Leap common stock exceeds approximately \$93.21 per share, the conversion rate will be determined pursuant to a formula based on the base conversion rate and an incremental share factor of 8.3150 shares per \$1,000 principal amount of the convertible notes, subject to adjustment.

Leap may be required to repurchase all outstanding convertible notes in cash at a repurchase price of 100% of the principal amount of the convertible notes, plus accrued and unpaid interest, if any, thereon to the repurchase date if (1) any person acquires beneficial ownership, directly or indirectly, of shares of Leap's capital stock that would entitle the person to exercise 50% or more of the total voting power of all of Leap's capital stock entitled to vote in the election of directors, (2) Leap (i) merges or consolidates with or into any other person, another person merges with or into Leap, or Leap conveys, sells, transfers or leases all or substantially all of its assets to another person or (ii) engages in any recapitalization, reclassification or other transaction in which all or substantially all of Leap common stock is exchanged for or converted into cash, securities or other property, in each case subject to limitations and excluding in the case of (1) and (2) any merger or consolidation where at least 90% of the consideration consists of shares of common stock traded on NYSE, ASE or NASDAQ, (3) a majority of the members of Leap's board of directors ceases to consist of individuals who were directors on the date of original issuance of the convertible notes or whose election or nomination for election was previously approved by the board of directors, (4) Leap is liquidated or dissolved or holders of common stock approve any plan or proposal for its liquidation or dissolution or (5) shares of Leap common stock are not listed for trading on any of the New York Stock Exchange, the NASDAQ Global Market or the NASDAQ Global Select Market (or any of their respective successors). Leap may not redeem the convertible notes at its option.

**10.0% Senior Notes Due 2015**

In June 2008, Cricket issued \$300 million of 10.0% unsecured senior notes due 2015 in a private placement to institutional buyers. The notes bear interest at the rate of 10.0% per year, payable semi-annually in cash in arrears, which interest payments commenced in January 2009. The 10.0% senior notes are guaranteed on an unsecured senior basis by Leap and each of its existing and future domestic subsidiaries (other than Cricket, which is the issuer of the 10.0% senior notes, and LCW Wireless, Denali and STX Wireless and their respective subsidiaries) that guarantee indebtedness for money borrowed of Leap, Cricket or any subsidiary guarantor. The 10.0% senior notes and the

guarantees are Leap s, Cricket s and the guarantors' general senior unsecured obligations and rank equally in right of payment with all of Leap s, Cricket s and the guarantors' existing and future unsubordinated unsecured indebtedness. The 10.0% senior notes and the guarantees are effectively junior to Leap s, Cricket s and the guarantors' existing and future secured obligations, including those under the 7.75% Secured Notes, to the extent of

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the value of the assets securing such obligations, as well as to existing and future liabilities of Leap's and Cricket's subsidiaries that are not guarantors (including LCW Wireless and STX Wireless) and of Denali and its respective subsidiaries. In addition, the 10.0% senior notes and the guarantees are senior in right of payment to any of Leap's, Cricket's and the guarantors' future subordinated indebtedness.

Prior to July 15, 2011, Cricket may redeem up to 35% of the aggregate principal amount of the 10.0% senior notes at a redemption price of 110.0% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the redemption date, from the net cash proceeds of specified equity offerings. Prior to July 15, 2012, Cricket may redeem the 10.0% senior notes, in whole or in part, at a redemption price equal to 100% of the principal amount thereof plus the applicable premium and any accrued and unpaid interest, if any, thereon to the redemption date. The applicable premium is calculated as the greater of (i) 1.0% of the principal amount of such notes and (ii) the excess of (a) the present value at such date of redemption of (1) the redemption price of such notes at July 15, 2012 plus (2) all remaining required interest payments due on such notes through July 15, 2012 (excluding accrued but unpaid interest to the date of redemption), computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (b) the principal amount of such notes. The 10.0% senior notes may be redeemed, in whole or in part, at any time on or after July 15, 2012, at a redemption price of 105.0% and 102.5% of the principal amount thereof if redeemed during the twelve months beginning on July 15, 2012 and 2013, respectively, or at 100% of the principal amount if redeemed during the twelve months beginning on July 15, 2014 or thereafter, plus accrued and unpaid interest, if any, thereon to the redemption date.

If a change of control occurs (which includes the acquisition of beneficial ownership of 35% or more of Leap's equity securities, a sale of all or substantially all of the assets of Leap and its restricted subsidiaries and a change in a majority of the members of Leap's board of directors that is not approved by the board), each holder of the 10.0% senior notes may require Cricket to repurchase all of such holder's notes at a purchase price equal to 101% of the principal amount of the notes, plus accrued and unpaid interest, if any, thereon to the repurchase date.

The indenture governing the 10.0% senior notes limits, among other things, our ability to: incur additional debt; create liens or other encumbrances; place limitations on distributions from restricted subsidiaries; pay dividends; make investments; prepay subordinated indebtedness or make other restricted payments; issue or sell capital stock of restricted subsidiaries; issue guarantees; sell assets; enter into transactions with our affiliates; and make acquisitions or merge or consolidate with another entity.

**7.75% Senior Secured Notes Due 2016**

On June 5, 2009, Cricket issued \$1,100 million of 7.75% Secured Notes in a private placement to institutional buyers at an issue price of 96.134% of the principal amount, which notes were exchanged in December 2009 for identical notes that had been registered with the SEC. The \$42.5 million discount to the net proceeds we received in connection with the issuance of the 7.75% Secured Notes has been recorded in long-term debt in the condensed consolidated financial statements and is being accreted as an increase to interest expense over the term of the notes using the effective interest rate method. At September 30, 2010, the effective interest rate on the 7.75% Secured Notes was 8.01%, which includes the effect of the discount accretion.

The 7.75% Secured Notes bear interest at the rate of 7.75% per year, payable semi-annually in cash in arrears, which interest payments commenced in November 2009. The 7.75% Secured Notes are guaranteed on a senior secured basis by Leap and each of its direct and indirect existing domestic subsidiaries (other than Cricket, which is the issuer of the 7.75% Secured Notes, and LCW Wireless, Denali and STX Wireless and their respective subsidiaries) and any future wholly owned domestic restricted subsidiary that guarantees any indebtedness of Cricket or a guarantor of the 7.75% Secured Notes. The 7.75% Secured Notes and the guarantees are Leap's, Cricket's and the guarantors' senior secured obligations and are equal in right of payment with all of Leap's, Cricket's and the guarantors' existing and future

unsubordinated indebtedness.

The 7.75% Secured Notes and the guarantees are effectively senior to all of Leap's, Cricket's and the guarantors existing and future unsecured indebtedness (including Cricket's \$1.4 billion aggregate principal amount of unsecured senior notes and, in the case of Leap, Leap's \$250 million aggregate principal amount of convertible senior notes), as well as to all of Leap's, Cricket's and the guarantors' obligations under any permitted junior lien

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debt that may be incurred in the future, in each case to the extent of the value of the collateral securing the senior secured notes and the guarantees.

The 7.75% Secured Notes and the guarantees are secured on a *pari passu* basis with all of Leap's, Cricket's and the guarantors' obligations under any permitted parity lien debt that may be incurred in the future. Leap, Cricket and the guarantors are permitted to incur debt under existing and future secured credit facilities in an aggregate principal amount outstanding (including the aggregate principal amount outstanding of the senior secured notes) of up to the greater of \$1,500 million and 3.5 times Leap's consolidated cash flow (excluding the consolidated cash flow of LCW Wireless, Denali and STX Wireless) for the prior four fiscal quarters through December 31, 2010, stepping down to 3.0 times such consolidated cash flow for any such debt incurred after December 31, 2010 but on or prior to December 31, 2011, and to 2.5 times such consolidated cash flow for any such debt incurred after December 31, 2011.

The 7.75% Secured Notes and the guarantees are effectively junior to all of Leap's, Cricket's and the guarantors' obligations under any permitted priority debt that may be incurred in the future (up to the lesser of 0.30 times Leap's consolidated cash flow (excluding the consolidated cash flow of LCW Wireless, Denali and STX Wireless) for the prior four fiscal quarters and \$300 million in aggregate principal amount outstanding), to the extent of the value of the collateral securing such permitted priority debt, as well as to existing and future liabilities of Leap's and Cricket's subsidiaries that are not guarantors (including LCW Wireless and STX Wireless) and of Denali and its respective subsidiaries. In addition, the 7.75% Secured Notes and the guarantees are senior in right of payment to any of Leap's, Cricket's and the guarantors' future subordinated indebtedness.

The 7.75% Secured Notes and the guarantees are secured on a first-priority basis, equally and ratably with any future parity lien debt, by liens on substantially all of the present and future personal property of Leap, Cricket and the guarantors, except for certain excluded assets and subject to permitted liens (including liens on the collateral securing any future permitted priority debt).

Prior to May 15, 2012, Cricket may redeem up to 35% of the aggregate principal amount of the 7.75% Secured Notes at a redemption price of 107.750% of the principal amount thereof, plus accrued and unpaid interest thereon to the redemption date, from the net cash proceeds of specified equity offerings. Prior to May 15, 2012, Cricket may redeem the 7.75% Secured Notes, in whole or in part, at a redemption price equal to 100% of the principal amount thereof plus the applicable premium and any accrued and unpaid interest thereon to the redemption date. The applicable premium is calculated as the greater of (i) 1.0% of the principal amount of such notes and (ii) the excess of (a) the present value at such date of redemption of (1) the redemption price of such notes at May 15, 2012 plus (2) all remaining required interest payments due on such notes through May 15, 2012 (excluding accrued but unpaid interest to the date of redemption), computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (b) the principal amount of such notes. The 7.75% Secured Notes may be redeemed, in whole or in part, at any time on or after May 15, 2012, at a redemption price of 105.813%, 103.875% and 101.938% of the principal amount thereof if redeemed during the twelve months beginning on May 15, 2012, 2013 and 2014, respectively, or at 100% of the principal amount if redeemed during the twelve months beginning on May 15, 2015 or thereafter, plus accrued and unpaid interest thereon to the redemption date.

If a change of control occurs (which includes the acquisition of beneficial ownership of 35% or more of Leap's equity securities (other than a transaction where immediately after such transaction Leap will be a wholly owned subsidiary of a person of which no person or group is the beneficial owner of 35% or more of such a person's voting stock), a sale of all or substantially all of the assets of Leap and its restricted subsidiaries and a change in a majority of the members of Leap's board of directors that is not approved by the board), each holder of the 7.75% Secured Notes may require Cricket to repurchase all of such holder's notes at a purchase price equal to 101% of the principal amount of the notes, plus accrued and unpaid interest thereon to the repurchase date.



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**DESCRIPTION OF NEW NOTES**

We issued the old notes and will issue the new notes pursuant to an Indenture, dated as of November 19, 2010, by and among the Company, the Initial Guarantors (as defined therein) and Wells Fargo Bank, National Association, as trustee (the Indenture). The terms of the notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the Trust Indenture Act). The notes are subject to all such terms, and you should refer to the Indenture and the Trust Indenture Act for a statement thereof. As used in this Description of New Notes, except as otherwise specified, the term notes means the new notes, the old notes and any additional notes that may be issued under the Indenture. All such notes will vote together as a single class for all purposes of the Indenture.

The following description is a summary of the material provisions of the Indenture. It does not restate the Indenture in its entirety. We urge you to read the Indenture because it, and not this description, defines your rights as Holders of the notes. Anyone who receives this prospectus may obtain a copy of the Indenture, without charge, by writing to Leap Wireless International, Inc., 5887 Copley Drive, San Diego, California 92111, Attention: Secretary.

You can find the definitions of certain terms used in this description below under the caption Certain Definitions. Defined terms used in this description but not defined below under the caption Certain Definitions have the meanings assigned to them in the Indenture. In this description, the word Company refers only to Cricket Communications, Inc. and not to any of its subsidiaries, and the word Parent refers only to Leap Wireless International, Inc. and not to any of its subsidiaries.

The registered Holder of a note will be treated as its owner for all purposes. Only registered Holders of notes will have rights under the Indenture.

**Brief Description of the Notes**

The notes:

are general unsecured obligations of the Company;

are equal in right of payment with all existing and any future unsubordinated Indebtedness of the Company;

are effectively subordinated to all existing and any future secured Indebtedness of the Company, including the \$1,100 million aggregate principal amount of the Company's 7.75% senior secured notes due 2016, to the extent of the assets securing such Indebtedness, to all existing and any future liabilities (including trade payables) of the Parent's Subsidiaries that are not Guarantors, to the extent of the assets of such Subsidiaries, and to all existing and any future liabilities (including trade payables) of the Parent's Designated Entities, to the extent of the assets of such Designated Entities;

are senior in right of payment to any future subordinated Indebtedness of the Company; and

are unconditionally guaranteed on a senior basis by the Guarantors as described under Note Guarantees.

As of September 30, 2010, on a pro forma basis after giving effect to the issuance of the old notes and assuming all \$1,100 million aggregate principal amount of the Company's 9.375% senior notes due 2014 are repurchased or redeemed, the Company would have had \$2,806 million of consolidated indebtedness outstanding, including



\$1,200 million aggregate principal amount of the old notes the Company is seeking to exchange, \$1,100 million aggregate principal amount of secured indebtedness under the Company's 7.75% senior secured notes due 2016 and \$300 million aggregate principal amount of the Company's 10.0% senior notes due 2015.

Although the Indenture limits the Incurrence of Indebtedness by the Parent and its Restricted Subsidiaries, such limitations are subject to a number of significant exceptions. The Parent and its Restricted Subsidiaries may be able to incur substantial amounts of Indebtedness, including secured Indebtedness, in the future.

As of the date of the Indenture, all of the Parent's Subsidiaries, including the Company, were Restricted Subsidiaries. However, under the circumstances described below under the caption Certain Covenants Designation of Restricted and Unrestricted Subsidiaries, we are permitted to designate certain of our Subsidiaries

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as Unrestricted Subsidiaries . Any Unrestricted Subsidiaries and any Designated Entities will not be subject to any of the restrictive covenants in the Indenture and will not guarantee the notes.

### **Principal, Maturity and Interest**

The Indenture provides for the issuance by the Company of notes with an unlimited principal amount, of which up to \$1,200 million aggregate principal amount of old notes is currently outstanding which may be exchanged for new notes issued under the Indenture in this exchange offer. The Company may issue additional notes (the additional notes ) from time to time. Any offering of additional notes is subject to the covenant described below under the caption Certain Covenants Incurrence of Indebtedness . The notes and any additional notes subsequently issued under the Indenture will be treated as a single class for all purposes under the Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase. The Company will issue new notes in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The notes will mature on October 15, 2020.

Interest on the new notes will accrue at the rate of 7.75% per annum and will be payable semi-annually in arrears on April 15 and October 15. The Company will make each interest payment to the Holders of record on the immediately preceding April 1 and October 1.

Interest on the new notes will accrue from the most recent date on which interest on the old notes has been paid, or if no interest has been paid, from the Issue Date. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

### **Methods of Receiving Payments on the Notes**

If a Holder has given wire transfer instructions to the Company, the Company will pay or cause the Paying Agent to pay all principal, interest and premium and Additional Interest, if any, on that Holder s notes in accordance with those instructions. All other payments on notes will be made at the office or agency of the Paying Agent and Registrar unless the Company elects to make interest payments by check mailed to the Holders at their addresses set forth in the register of Holders.

### **Paying Agent and Registrar for the Notes**

The Trustee will initially act as Paying Agent and Registrar. The Company may change the Paying Agent or Registrar without prior notice to the Holders, and the Company or any of its Subsidiaries may act as Paying Agent or Registrar.

### **Transfer and Exchange**

A Holder may transfer or exchange notes in accordance with the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company is not required to transfer or exchange any note selected for redemption. Also, the Company is not required to transfer or exchange any note for a period of 15 days before the mailing of a notice of redemption of notes to be redeemed.

### **Note Guarantees**

The notes will be guaranteed, jointly and severally, by the Parent and each of its Restricted Subsidiaries that guarantees any Indebtedness of the Parent, the Company or any Subsidiary Guarantor. As of the Issue Date, the only Restricted Subsidiary of the Parent that guaranteed the notes was Cricket License Company, LLC.

Each Note Guarantee:

will be a general unsecured obligation of the Guarantor;

will be equal in right of payment with all existing and any future unsubordinated Indebtedness of such Guarantor, including, after giving effect to the application of net proceeds from the sale of the notes, the \$300 million aggregate principal amount of the Company's 10.0% senior notes due 2015, the \$1,100 million

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aggregate principal amount of the Company's 7.75% senior secured notes due 2016 and, in the case of the Parent, the \$250 million aggregate principal amount of the Parent's convertible senior notes due 2014;

will be effectively subordinated to all existing and any future secured Indebtedness of such Guarantor, including the guarantee by such Guarantor of the Company's 7.75% senior secured notes due 2016, to the extent of the assets securing such Indebtedness, and the Note Guarantee of the Parent will be effectively subordinated to all existing and any future liabilities of the Parent's Subsidiaries other than the Company and any Subsidiary Guarantor to the extent of the assets of such Subsidiaries and to all existing and any future liabilities of the Parent's Designated Entities to the extent of the assets of such Designated Entities; and

will be senior in right of payment to any future subordinated Indebtedness of the Guarantor.

The obligations of each Guarantor under its Note Guarantee will be limited as necessary to prevent that Note Guarantee from constituting a fraudulent conveyance under applicable law. We cannot assure you that this limitation will protect the Note Guarantees from fraudulent conveyance or fraudulent transfer challenges or, if it does, that the remaining amount due and collectible under the Note Guarantees would suffice, if necessary, to pay the notes in full when due. In a Florida bankruptcy case, this kind of provision was found to be unenforceable and as a result the subsidiary guarantees in that case were found to be fraudulent conveyances. We do not know if that case will be followed if there is litigation on this point under the Indenture. However, if it is followed, the risk that the Note Guarantees will be found to be fraudulent conveyances will be significantly increased. See Risk Factors Federal and State Statutes Allow Courts, Under Specific Circumstances, to Void Guarantees and Require Noteholders to Return Payments Received From Us or the Guarantors .

The Company's non-guarantor Restricted Subsidiaries and Designated Entities had total assets of \$627.7 million as of September 30, 2010, and had total revenues and operating losses of \$162.3 million and \$14.3 million, respectively, for the nine months ended September 30, 2010, and \$153.7 million and \$98.7 million, respectively, for the year ended December 31, 2009.

Note Guarantees of the Subsidiary Guarantors may be released in certain circumstances. See Certain Covenants Guarantees .

## **Optional Redemption**

At any time prior to October 15, 2013, the Company may (on any one or more occasions) redeem up to 35% of the aggregate principal amount of notes issued under the Indenture (including any additional notes) at a redemption price of 107.75% of the principal amount thereof, plus accrued and unpaid interest and Additional Interest, if any, thereon to the redemption date, with the net cash proceeds of one or more Equity Offerings; *provided that*:

- (1) at least 50% of the aggregate principal amount of notes issued under the Indenture (including any additional notes) remains outstanding immediately after the occurrence of such redemption (excluding notes held by the Company and its Affiliates); and
- (2) the redemption must occur within 90 days of the date of the closing of such Equity Offering.

At any time prior to October 15, 2015, the Company may redeem all or part of the notes upon not less than 30 nor more than 60 days' prior written notice at a redemption price equal to the sum of (i) 100% of the principal amount thereof, plus (ii) the Applicable Premium as of the date of redemption, plus (iii) accrued and unpaid interest and Additional Interest, if any, to the date of redemption.

Except pursuant to the preceding paragraphs and as described under Repurchase at the Option of Holders Change of Control , the notes will not be redeemable at the Company s option prior to October 15, 2015.

On or after October 15, 2015, the Company may redeem all or a part of the notes upon not less than 30 nor more than 60 days written notice, at the redemption prices (expressed as percentages of principal amount) set forth below

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plus accrued and unpaid interest and Additional Interest, if any, thereon, to the applicable redemption date, if redeemed during the twelve-month period beginning on October 15 of the years indicated below:

<b>Year</b>	<b>Percentage</b>
2015	103.875%
2016	102.583%
2017	101.292%
2018 and thereafter	100.000%

If less than all of the notes are to be redeemed at any time, the Trustee will select notes for redemption as follows:

(1) if the notes are listed on any national securities exchange, in compliance with the requirements of such principal national securities exchange; or

(2) if the notes are not so listed, on a pro rata basis,

subject to adjustments so that no notes of \$2,000 or less will be redeemed in part.

Notices of redemption will be sent electronically or mailed by first class mail at least 30 but not more than 60 days before the redemption date to each Holder of notes to be redeemed at its registered address. Notices of redemption may not be conditional.

If any note is to be redeemed in part only, the notice of redemption that relates to that note will state the portion of the principal amount thereof to be redeemed. A note in principal amount equal to the unredeemed portion of the original note will be issued in the name of the Holder thereof upon cancellation of the original note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on notes or portions of them called for redemption.

**Mandatory Redemption**

The Company is not required to make mandatory redemption or sinking fund payments with respect to the notes.

**Repurchase at the Option of Holders*****Change of Control***

If a Change of Control occurs, each Holder of notes will have the right to require the Company to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of that Holder's notes pursuant to an offer (a *Change of Control Offer*) on the terms set forth in the Indenture. In the Change of Control Offer, the Company will offer payment (a *Change of Control Payment*) in cash equal to not less than 101% of the aggregate principal amount of notes repurchased plus accrued and unpaid interest and Additional Interest, if any, thereon, to the date of repurchase (the *Change of Control Payment Date*, which date will be no earlier than the date of such Change of Control). No later than 30 days following any Change of Control, the Company will send a written notice to each Holder and the Trustee describing the transaction or transactions that constitute the Change of Control and offering to repurchase notes on the Change of Control Payment Date specified in such notice, which date will be no earlier than 30 days (or such shorter period as may be permitted by the eligibility rules of DTC) and no later than 60 days from the date such notice is sent, pursuant to the procedures required by the Indenture and described in such notice. The Company will comply with the

requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of the notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of the Indenture by virtue of such compliance.

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On the Change of Control Payment Date, the Company will, to the extent lawful:

- (1) accept for payment all notes or portions thereof properly tendered pursuant to the Change of Control Offer;
- (2) deposit with the Paying Agent, prior to 11:00 am, New York City time, an amount equal to the Change of Control Payment in respect of all notes or portions thereof so tendered; and
- (3) deliver or cause to be delivered to the Trustee the notes so accepted together with an Officers Certificate stating the aggregate principal amount of notes or portions thereof being purchased by the Company.

The Paying Agent will promptly mail or wire transfer to each Holder of notes so tendered the Change of Control Payment for such notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new note equal in principal amount to any unpurchased portion of the notes surrendered, if any; *provided* that each such new note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

Future credit agreements or other similar agreements to which the Parent or the Company becomes a party may contain restrictions on the Company's ability to purchase the notes. In the event a Change of Control occurs at a time when the Company is prohibited from purchasing notes, the Company could seek the consent of its lenders to the purchase of notes or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company will remain prohibited from purchasing notes. In such case, the Company's failure to purchase tendered notes would constitute an Event of Default under the Indenture which may, in turn, constitute a default under such other agreements.

The provisions described above that require the Company to make a Change of Control Offer following a Change of Control will be applicable regardless of whether any other provisions of the Indenture are applicable. Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the Holders of the notes to require that the Company repurchase or redeem the notes in the event of a takeover, recapitalization or similar transaction.

The Company will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all notes validly tendered and not withdrawn under such Change of Control Offer or (2) notice of redemption with respect to all of the notes has been given pursuant to the Indenture as described above under the caption "Optional Redemption", unless and until there is a default in payment of the applicable redemption price.

A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer. Notes repurchased by the Company pursuant to a Change of Control Offer will have the status of notes issued but not outstanding or will be retired and canceled, at the option of the Company. Notes purchased by a third party pursuant to the preceding paragraph will have the status of notes issued and outstanding.

In the event that holders of not less than 90% of the aggregate principal amount of the outstanding notes accept a Change of Control Offer and the Company purchases all of the notes held by such holders, the Company will have the right, upon not less than 30 nor more than 60 days' prior written notice, given not more than 30 days following the purchase pursuant to the Change of Control Offer described above, to redeem all of the notes that remain outstanding following such purchase at a redemption price equal to the Change of Control Payment plus, to the extent not included



in the Change of Control Payment, accrued and unpaid interest on the notes that remain outstanding, to the date of redemption.

The definition of Change of Control includes a phrase relating to the direct or indirect sale, transfer, conveyance or other disposition of all or substantially all of the properties or assets of the Parent and its Restricted Subsidiaries taken as a whole. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of the phrase under applicable law. Accordingly, the

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ability of a Holder of notes to require the Company to repurchase such notes as a result of a sale, transfer, conveyance or other disposition of less than all of the assets of the Parent and its Restricted Subsidiaries taken as a whole to another Person or group may be uncertain.

***Asset Sales***

The Parent will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Parent or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75% of the consideration therefor received by the Parent or such Restricted Subsidiary is in the form of cash, Cash Equivalents or Replacement Assets or a combination thereof. For purposes of this provision, each of the following will be deemed to be cash:

(a) any liabilities, as shown on the Parent's or such Restricted Subsidiary's most recent balance sheet, of the Parent or any Restricted Subsidiary (other than contingent liabilities, Indebtedness that is by its terms subordinated to the notes or any Note Guarantee and liabilities to the extent owed to the Parent or any Affiliate of the Parent) that are assumed by the transferee of any such assets or Equity Interests pursuant to a written novation agreement that releases the Parent or such Restricted Subsidiary from further liability therefor; and

(b) any securities, notes or other obligations received by the Parent or any such Restricted Subsidiary from such transferee that are (within 90 days of receipt and subject to ordinary settlement periods) converted by the Parent or such Restricted Subsidiary into cash (to the extent of the cash received in that conversion).

Notwithstanding the foregoing, the 75% limitation referred to in the prior paragraph shall be deemed satisfied with respect to any Asset Sale in which the cash, Cash Equivalents or Replacement Assets portion of the consideration received therefrom, determined in accordance with the foregoing provision on an after tax basis, is equal to or greater than what the after-tax proceeds would have been had such Asset Sale complied with the aforementioned 75% limitation.

Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Parent or its Restricted Subsidiaries may apply such Net Proceeds (or any portion thereof) at its option:

(1) to repay, prepay, defease, redeem, purchase or otherwise retire unsubordinated Indebtedness and other Obligations under any Credit Facility or any Indebtedness secured by property that is subject to such Asset Sale (and to permanently reduce commitments with respect thereto in the case of revolving borrowings); or

(2) to purchase Replacement Assets (or enter into a binding agreement to purchase such Replacement Assets; *provided* that (x) such purchase is consummated within 180 days after the date that is 365 days after the receipt of such Net Proceeds from such Asset Sale and (y) if such purchase is not consummated within the period set forth in subclause (x), the Net Proceeds not so applied will be deemed to be Excess Proceeds (as defined below)).

Pending the final application of any such Net Proceeds, the Parent or any of its Restricted Subsidiaries may temporarily reduce revolving credit borrowings or otherwise invest such Net Proceeds in any manner that is not prohibited by the Indenture.

On the 366th day after an Asset Sale (or, in the event that a binding agreement has been entered into as set forth in clause (2) of the preceding paragraph, the later date of expiration of the 180-day period set forth in such clause (2)) or

such earlier date, if any, as the Parent determines not to apply the Net Proceeds relating to such Asset Sale as set forth in the preceding paragraph (each such date being referred as an Excess Proceeds Trigger Date ), such aggregate amount of Net Proceeds that has not been applied on or before the Excess Proceeds Trigger Date as permitted in the preceding paragraph ( Excess Proceeds ) will be applied by the Company to make an offer (an Asset Sale Offer ) to all Holders of notes and all holders of other Indebtedness that is *pari passu* with the notes or

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any Note Guarantee containing provisions similar to those set forth in the Indenture with respect to offers to purchase with the proceeds of sales of assets, to purchase the maximum principal amount of notes and such other *pari passu* Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount of the notes and such other *pari passu* Indebtedness plus accrued and unpaid interest and Additional Interest, if any, to the date of purchase, and will be payable in cash.

The Company may defer the Asset Sale Offer until the aggregate unutilized Excess Proceeds accrued in the preceding twelve calendar months equals or exceeds \$20.0 million, at which time the entire unutilized amount of Excess Proceeds (not only the amount in excess of \$20.0 million) will be applied as provided in the preceding paragraph. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Parent and its Restricted Subsidiaries may use such Excess Proceeds for any purpose not otherwise prohibited by the Indenture. If the aggregate principal amount of notes and such other *pari passu* Indebtedness tendered in such Asset Sale Offer exceeds the amount of Excess Proceeds, the notes and such other *pari passu* Indebtedness will be purchased on a pro rata basis based on the principal amount of notes and such other *pari passu* Indebtedness tendered, with such adjustments as may be needed so that only notes in minimum amounts of \$2,000 and integral multiples of \$1,000 will be purchased. Upon completion of each Asset Sale Offer, any remaining Excess Proceeds subject to such Asset Sale will no longer be deemed to be Excess Proceeds.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of the Indenture by virtue of such compliance.

Future credit agreements or other similar agreements to which the Parent or the Company becomes a party may contain restrictions on the Company's ability to purchase notes. In the event an Asset Sale occurs at a time when the Company is prohibited from purchasing notes, the Company could seek the consent of its lenders to the purchase of notes or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company will remain prohibited from purchasing notes. In such case, the Company's failure to purchase tendered notes would constitute an Event of Default under the Indenture which would, in turn, constitute a default under such other agreements.

## **Certain Covenants**

### ***Changes in Covenants When Notes Rated Investment Grade***

If on any date following the Issue Date (such date, a Suspension Date ):

- (1) the notes are rated Investment Grade by two out of the three Rating Agencies; and
- (2) no Default or Event of Default shall have occurred and be continuing (other than with respect to the covenants specifically listed under the following captions),

then, beginning on that day and subject to the provisions of the following paragraph, the covenants specifically listed under the following captions in this prospectus will be suspended

- (1) Repurchase at the Option of Holders Asset Sales ;

- (2) Restricted Payments ;
- (3) Incurrence of Indebtedness ;
- (4) Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries ;
- (5) Transactions with Affiliates ;
- (6) Designation of Restricted and Unrestricted Subsidiaries ; and

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(7) clauses (2) (to the extent that a Default or an Event of Default exists by reason of one or more of the covenants specifically listed in this paragraph) and (3) of the covenant described below under the caption Merger, Consolidation or Sale of Assets .

During any period that the foregoing covenants have been suspended, the Company's Board of Directors may not designate any of its Subsidiaries as Unrestricted Subsidiaries pursuant to the covenant described below under the caption Designation of Restricted and Unrestricted Subsidiaries or the definition of Unrestricted Subsidiary . The Company will provide written notice to the Trustee of the occurrence of any Suspension Date.

Notwithstanding the foregoing, if the rating assigned by two out of the three Rating Agencies should subsequently decline to below Investment Grade, the foregoing covenants will be reinstated as of and from the date of such rating decline and any actions taken, or omitted to be taken, before such rating decline that would have been prohibited had the foregoing covenants been in effect shall not form the basis for a Default or an Event of Default.

Calculations under the reinstated Restricted Payments covenant will be made as if the Restricted Payments covenant had been in effect since the Issue Date except that no Default or Event of Default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended. There can be no assurance that the notes will ever achieve an Investment Grade rating or that any such rating will be maintained.

***Restricted Payments***

(A) The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay (without duplication) any dividend or make any other payment or distribution on account of the Parent's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Parent or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Parent's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends, payments or distributions (x) payable in Equity Interests (other than Disqualified Stock) of the Parent or (y) to the Parent or a Restricted Subsidiary of the Parent);

(2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Company or the Parent) any Equity Interests of the Company or the Parent;

(3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness that is subordinated to the notes or any Note Guarantees (excluding any intercompany Indebtedness between or among the Parent and any of its Restricted Subsidiaries), except (x) a payment of interest or principal at the Stated Maturity thereof or (y) the purchase, repurchase or other acquisition of any such Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase or other acquisition; or

(4) make any Restricted Investment (all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as Restricted Payments ),

unless, at the time of and after giving effect to such Restricted Payment:

(1) no Default or Event of Default will have occurred and be continuing or would occur as a consequence thereof;

(2) the Parent would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable Four Quarter Period, have been permitted to

Incur at least \$1.00 of additional Indebtedness pursuant to the first paragraph of the covenant described below under the caption Incurrence of Indebtedness ; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Parent and its Restricted Subsidiaries after October 23, 2006 (excluding Restricted Payments permitted

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by clauses (2), (3), (4), (5), (6), (7), (8), (9) and (10) of the next succeeding paragraph (B)), is less than the sum, without duplication, of:

(i) 100% of the Consolidated Cash Flow of the Parent for the period (taken as one accounting period) from October 1, 2006 to the end of the Parent's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, minus 1.5 times the Fixed Charges of the Parent for the same period, plus

(ii) 100% of the aggregate net cash proceeds (including Cash Equivalents) received by the Parent since October 23, 2006 as a contribution to its common equity capital or from the issue or sale of Equity Interests (other than Disqualified Stock) of the Parent (other than proceeds received by the Parent from the Forward Sale Agreements) or from the Incurrence of Indebtedness of the Parent or the Company that has been converted into or exchanged for such Equity Interests (other than Equity Interests sold to, or Indebtedness held by, a Subsidiary of the Parent), plus

(iii) with respect to Restricted Investments made by the Parent and its Restricted Subsidiaries after October 23, 2006, an amount equal to the net reduction in such Restricted Investments in any Person resulting from repayments of loans or advances, or other transfers of assets (including dividends and other distributions), in each case to the Parent or any Restricted Subsidiary or from the net cash proceeds from the sale of any such Restricted Investment (except, in each case, to the extent any such payment or proceeds are included in the calculation of Consolidated Cash Flow), from the release of any Guarantee (except to the extent any amounts are paid under such Guarantee) or from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries, not to exceed, in each case, the amount of Restricted Investments previously made by the Parent or any Restricted Subsidiary in such Person or Unrestricted Subsidiary after October 23, 2006; minus

(iv) the aggregate amount of Net Equity Proceeds taken into account for purposes of Indebtedness Incurred pursuant to clause (13) of the definition of Permitted Debt set forth under the caption Incurrence of Indebtedness .

As of September 30, 2010, the Company had approximately \$1,016 million available to make Restricted Payments under clause (3) above.

(B) The preceding provisions will not prohibit, so long as, in the case of clauses (4), (7), (9) and (10) below, no Default has occurred and is continuing or would be caused thereby:

(1) the payment of any dividend within 60 days after the date of declaration thereof, if at said date of declaration such payment would have complied with the provisions of the Indenture;

(2) the payment of any dividend (or in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Parent to the holders of its Common Stock on a pro rata basis;

(3) the making of any Restricted Payment in exchange for, or out of the net cash proceeds of a contribution to the common equity of the Parent or a substantially concurrent sale (other than to a Subsidiary of the Parent) of, Equity Interests (other than Disqualified Stock) of the Parent except to the extent such net cash proceeds are taken into account for purposes of Indebtedness Incurred pursuant to clause (13) of the definition of Permitted Debt set forth under the caption Incurrence of Indebtedness ; *provided* that the amount of any such net cash proceeds that are utilized for any such redemption, repurchase, retirement, defeasance or other acquisition will be excluded from clause (3) (ii) of the preceding paragraph (A);

(4) the defeasance, redemption, repurchase or other acquisition of Indebtedness subordinated to the notes or the Note Guarantees with the net cash proceeds from an Incurrence of Permitted Refinancing Indebtedness;



(5) Investments acquired as a capital contribution to, or in exchange for, or out of the net cash proceeds of a substantially concurrent sale (other than to a Subsidiary of the Parent) of, Equity Interests (other than Disqualified Stock) of, the Parent except to the extent such net cash proceeds are taken into account for purposes of Indebtedness Incurred pursuant to clause (13) of the definition of Permitted Debt set forth under

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the caption Incurrence of Indebtedness ; *provided* that the amount of any such net cash proceeds that are utilized for any such acquisition or exchange will be excluded from clause (3) (ii) of the preceding paragraph (A);

(6) the repurchase of Equity Interests deemed to occur upon the exercise of options or warrants to the extent that such Equity Interests represents all or a portion of the exercise price thereof;

(7) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Parent held by any current or former employee, consultant or director of the Parent, or any Restricted Subsidiaries of the Parent pursuant to the terms of any equity subscription agreement, stock option agreement or similar agreement entered into in the ordinary course of business; *provided* that the aggregate of all amounts paid by the Parent in any calendar year will not exceed \$2.5 million (with unused amounts in any calendar year being carried over to the next succeeding calendar year, subject to maximum payment of \$5.0 million in any calendar year); *provided, further*, that such amount in any calendar year may be increased by an amount equal to (a) the net cash proceeds from the sale of Equity Interests of the Parent to current or former members of management, directors, consultants or employees that occurs after October 23, 2006 (*provided* that the amount of any such net cash proceeds will be excluded from clause (3) (ii) of the preceding paragraph (A)), plus (b) the net cash proceeds of key man life insurance policies received by the Parent or its Restricted Subsidiaries after October 23, 2006;

(8) the purchase, redemption, acquisition, cancellation or other retirement for value of shares of Capital Stock of the Parent, to the extent necessary, in the good faith judgment of the Parent's Board of Directors, to prevent the loss or secure the renewal or reinstatement of any license held by the Parent or any of its Restricted Subsidiaries from any governmental agency;

(9) other Restricted Payments in an aggregate amount not to exceed \$75.0 million; and

(10) the declaration or payment of dividends to holders of any class or series of Disqualified Stock of the Parent or any of its Restricted Subsidiaries issued in accordance with the covenant described below under the caption Incurrence of Indebtedness .

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued to or by the Parent or such Subsidiary, as the case may be, pursuant to the Restricted Payment; *provided* that if the Fair Market Value exceeds \$10.0 million, such Fair Market Value shall be determined in good faith by the Board of Directors of the Parent evidenced by a Board Resolution. Not later than the date of making any Restricted Payment under clause (A) (3) or B (9) above, the Parent will deliver to the Trustee an Officers' Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by this Restricted Payments covenant were computed, together with a copy of any opinion or appraisal required by the Indenture.

***Incurrence of Indebtedness***

The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness; *provided, however*, that the Parent, the Company or any Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness), and any Restricted Subsidiary that is not a Subsidiary Guarantor may Incur Acquired Indebtedness, if, after giving effect to the Incurrence of such Indebtedness and the receipt and application of the proceeds therefrom, the Consolidated Leverage Ratio would be less than 6.25 to 1. The first paragraph of this covenant will not prohibit the Incurrence of any of the following items of Indebtedness (collectively, Permitted Debt ):

(1) the Incurrence by the Parent, the Company or any Subsidiary Guarantor of Indebtedness under Credit Facilities in an aggregate amount at any one time outstanding pursuant to this clause (1) not to exceed the greater of

(a) \$1,750.0 million, less the aggregate amount of all Net Proceeds of Asset Sales applied by the Parent or any Restricted Subsidiary thereof to permanently repay any such Indebtedness pursuant to the covenant described above under the caption Repurchase at the Option of Holders Asset Sales and (b) 300% of the Consolidated Cash Flow of the Parent, its Restricted Subsidiaries and its Designated Entities for the Four Quarter Period;

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(2) the Incurrence of Existing Indebtedness;

(3) the Incurrence by the Parent, the Company and the Subsidiary Guarantors of Indebtedness represented by the notes and the related Note Guarantees to be issued on the Issue Date and the exchange notes and the related Guarantees to be issued pursuant to the Registration Rights Agreement in exchange therefor;

(4) the Incurrence by the Parent, the Company or any Restricted Subsidiary of Indebtedness represented by Capital Lease Obligations, mortgage financings, Attributable Debt, purchase money obligations or other obligations, in each case, Incurred for the purpose of financing (whether prior to or within 270 days after) all or any part of the purchase price or cost of construction or improvement of property, plant or equipment (including acquisition of Capital Stock of a Person that becomes a Restricted Subsidiary to the extent of the Fair Market Value of the property, plant or equipment of such Person) used in the business of the Parent, the Company or such Subsidiary Guarantor, in an aggregate amount, including all Permitted Refinancing Indebtedness Incurred to refund, refinance or replace any Indebtedness Incurred pursuant to this clause (4), not to exceed 5.0% of the total assets of the Parent (determined as of the end of the most recent fiscal quarter of the Parent for which internal financial statements of the Parent are available), at any time outstanding;

(5) the Incurrence by the Parent or any Restricted Subsidiary of the Parent of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge Indebtedness (other than intercompany Indebtedness) that was permitted by the Indenture to be Incurred under the first paragraph of this covenant or clauses (2), (3), (4), (5), (12) or (15) of this paragraph;

(6) the Incurrence by the Parent or any of its Restricted Subsidiaries of intercompany Indebtedness owing to or held by the Parent or any of its Restricted Subsidiaries; *provided, however*, that:

(a) if the Parent, the Company or any Subsidiary Guarantor is the obligor on such Indebtedness, such Indebtedness must be unsecured and expressly subordinated to the prior payment in full in cash of all Obligations with respect to the notes, in the case of the Company, or the Note Guarantee, in the case of the Parent or a Subsidiary Guarantor; and

(b) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Parent, the Company or a Restricted Subsidiary of the Parent and (ii) any sale or other transfer of any such Indebtedness to a Person that is not the Parent, the Company or a Restricted Subsidiary of the Parent, will be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Parent, the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (6);

(7) the Guarantee by the Parent, the Company or any of the Subsidiary Guarantors of Indebtedness of the Company or a Restricted Subsidiary of the Parent that was permitted to be Incurred by another provision of this covenant; *provided* that if the Indebtedness being Guaranteed is subordinated to or *pari passu* with the notes or any Note Guarantee, then the Guarantee shall be subordinated or *pari passu*, as applicable, to the same extent as the Indebtedness guaranteed;

(8) the Incurrence by the Parent, the Company or any of its Restricted Subsidiaries of Hedging Obligations that are Incurred for the purpose of fixing, hedging or swapping interest rate, commodity price or foreign currency exchange rate risk (or to reverse or amend any such agreements previously made for such purposes), and not for speculative purposes, and that do not increase the Indebtedness of the obligor outstanding at any time other than as a result of fluctuations in interest rates, commodity prices or foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;

(9) the Incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, or Guarantees or letters of credit,

surety bonds or performance bonds securing any obligations of the Parent or any of its Restricted Subsidiaries pursuant to such agreements, in any case Incurred in connection with the disposition of any business, assets or Restricted Subsidiary (other than Guarantees of Indebtedness Incurred by any Person

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acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition), so long as the amount does not exceed the gross proceeds actually received by the Parent or any Restricted Subsidiary thereof in connection with such disposition;

(10) the Incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, *provided, however*, that such Indebtedness is extinguished promptly after its Incurrence;

(11) the Incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business; provided that, upon the drawing of such letters of credit or the Incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or Incurrence;

(12) the Incurrence by the Parent, the Company or any Restricted Subsidiary of Acquired Indebtedness in an aggregate principal amount at any time outstanding, including all Permitted Refinancing Indebtedness Incurred to refund, refinance or replace any Indebtedness Incurred pursuant to this clause (12), not to exceed \$200.0 million;

(13) the incurrence by the Parent, the Company or any of the Subsidiary Guarantors of Contribution Indebtedness;

(14) the Incurrence by the Parent or the Company of Indebtedness to the extent that the net proceeds thereof are promptly deposited to defease or to satisfy and discharge the notes; or

(15) the Incurrence by the Parent or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate amount at any time outstanding, including all Permitted Refinancing Indebtedness Incurred to refund, refinance or replace any Indebtedness Incurred pursuant to this clause (15), not to exceed \$100.0 million.

For purposes of determining compliance with this covenant, in the event that any proposed Indebtedness (including Acquired Indebtedness) meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (15) above, or is entitled to be Incurred pursuant to the first paragraph of this covenant, the Parent will be permitted to divide and classify such item of Indebtedness at the time of its Incurrence in any manner that complies with this covenant and may later redivide and/or reclassify all or a portion of such item of Indebtedness in any manner that complies with this covenant. Notwithstanding the foregoing, Indebtedness under the Company's 7.75% senior secured notes due 2016 outstanding on the Issue Date will be deemed to have been Incurred in reliance on the exception provided by clause (1) of the definition of Permitted Debt.

Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that may be Incurred pursuant to this covenant will not be deemed to be exceeded with respect to any outstanding Indebtedness due solely to the result of fluctuations in the exchange rates of currencies, and in no event shall the reclassification of any lease or other liability as indebtedness due to a change in accounting principles after the Issue Date be deemed to be an incurrence of Indebtedness.

The Company will not Incur any Indebtedness that is subordinate in right of payment to any other Indebtedness of the Company unless it is subordinate in right of payment to the notes to the same extent. The Parent will not, and will not permit any Subsidiary Guarantor, to Incur any Indebtedness that is subordinate in right of payment to any other Indebtedness of the Parent or such Subsidiary Guarantor, as the case may be, unless it is subordinate in right of payment to the relevant Note Guarantee to the same extent. For purposes of the foregoing, no Indebtedness will be deemed to be subordinated in right of payment to any other Indebtedness of the Parent, the Company or any Subsidiary Guarantor, as applicable, solely by reason of any Liens or Guarantees arising or created in respect thereof or by virtue of the fact that the holders of any secured Indebtedness have entered into intercreditor agreements giving

one or more of such holders priority over the other holders in the collateral held by them.

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***Liens***

The Parent will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien securing Indebtedness (other than Permitted Liens) upon any of their property or assets, now owned or hereafter acquired, unless all payments due under the Indenture and the notes or Note Guarantees, as applicable, are secured on an equal and ratable basis with the obligations so secured (or, in the case of Indebtedness subordinated to the notes or the related Note Guarantees, prior or senior thereto, with the same relative priority as the notes or the related Note Guarantees will have with respect to such subordinated Indebtedness) until such time as such obligations are no longer secured by a Lien.

***Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries***

The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock (or with respect to any other interest or participation in, or measured by, its profits) to the Parent or any of its Restricted Subsidiaries or pay any liabilities owed to the Parent or any of its Restricted Subsidiaries;

(2) make loans or advances to the Parent or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Parent or any of its Restricted Subsidiaries.

However, the preceding restrictions will not apply to encumbrances or restrictions:

(1) existing under, by reason of or with respect to Existing Indebtedness, the indenture relating to the Company's 7.75% senior secured notes due 2016 and the collateral and other documents related thereto or any other agreements, as in effect on the Issue Date or any and any amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings thereof, *provided* that the encumbrances and restrictions in any such amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Board of Directors of the Parent, not materially more restrictive, taken as a whole, than those contained in Existing Indebtedness, the documents relating to the Company's 7.75% senior secured notes due 2016 or such other agreements, as the case may be;

(2) set forth in the Indenture, the notes, the Note Guarantees and the exchange notes and the related Guarantees to be issued pursuant to the Registration Rights Agreement in exchange therefor;

(3) existing under, by reason of or with respect to applicable law, rule, regulation or order;

(4) with respect to any Person or the property or assets of a Person acquired by the Parent or any of its Restricted Subsidiaries existing at the time of such acquisition and not incurred in connection with or in contemplation of such acquisition, which encumbrance or restriction is not applicable to any Person or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired and any amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings thereof, *provided* that the encumbrances and restrictions in any such amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Board of Directors of the Parent, not materially more restrictive, taken as a whole, than those in effect on the date of the acquisition;



(5) (a) that restrict in a customary manner the subletting, assignment or transfer of any property or asset that is a lease, license, conveyance or contract or similar property or asset,

(b) existing by virtue of any option or right with respect to, or Lien on, any property or assets of the Parent or any Restricted Subsidiary thereof not otherwise prohibited by the Indenture, or

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(c) arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Parent or any Restricted Subsidiary thereof in any manner material to the Parent or any Restricted Subsidiary thereof;

(6) existing under, by reason of or with respect to any agreement for the sale, transfer or other disposition of any Capital Stock or property and assets of a Restricted Subsidiary, pending the consummation of such sale, transfer or other disposition;

(7) existing under restrictions on cash or other deposits or net worth imposed by customers, suppliers or landlords or required by insurance, surety or bonding companies, in each case, under contracts entered into in the ordinary course of business;

(8) existing under, by reason of or with respect to provisions with respect to the payment of dividends, the making of other distributions, loans or advances or the sale, lease or other transfer of any assets or property, in each case contained in joint venture agreements, partnership agreements, membership agreements and similar agreements and which the Board of Directors of the Parent or the Company determines in good faith will not adversely affect the Company's ability to make payments of principal or interest payments on the notes;

(9) in other Indebtedness incurred in compliance with the covenant described under the caption **Incurrence of Indebtedness**; *provided* that such restrictions, taken as a whole, are, in the good faith judgment of the Parent's Board of Directors, no more materially restrictive with respect to such encumbrances and restrictions than those contained in the existing agreements referenced in clauses (1) and (2) above; and

(10) in secured Indebtedness that is otherwise permitted to be incurred pursuant to the covenants under the captions **Incurrence of Indebtedness** and **Liens**.

***Merger, Consolidation or Sale of Assets***

Neither the Company nor the Parent will, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company or the Parent, as applicable, is the surviving corporation) or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties and assets in one or more related transactions, to another Person, unless:

(1) either: (a) the Company or the Parent, as applicable, is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger (if other than the Company or the Parent, as applicable) or to which such sale, assignment, transfer, conveyance or other disposition will have been made (i) is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia and (ii) assumes all the obligations of the Company or the Parent, as applicable, under the notes, the Note Guarantee, the Indenture and the Registration Rights Agreement, as the case may be, pursuant to agreements reasonably satisfactory to the Trustee; *provided* that in the case where such Person is not a corporation, a co-obligor of the notes is a corporation;

(2) immediately after giving effect to such transaction, no Default or Event of Default exists;

(3) immediately after giving effect to such transaction on a pro forma basis, (a) the Company or the Parent, as applicable, or the Person formed by or surviving any such consolidation or merger (if other than the Company or the Parent, as applicable), or to which such sale, assignment, transfer, conveyance or other disposition will have been made, will be permitted to Incur at least \$1.00 of additional Indebtedness pursuant to the first paragraph of the covenant described above under the caption **Incurrence of Indebtedness** or (b) the Consolidated Leverage Ratio for

the Parent or such Person, as the case may be, will not be greater than the Consolidated Leverage Ratio for the Parent immediately prior to such transaction;

(4) each Guarantor, unless such Guarantor is the Person with which the Company or the Parent has entered into a transaction under this covenant, will have confirmed in writing to the Trustee that its Note Guarantee will apply to the obligations of the Company or the surviving Person in accordance with the notes and the Indenture; and

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(5) the Company or the Parent has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or disposition and such supplemental indenture, if any, comply with the Indenture.

Upon any consolidation or merger, or any sale, assignment, transfer, conveyance or other disposition of all or substantially all of the assets of the Company or the Parent, as applicable, in accordance with this covenant, the successor corporation formed by such consolidation or into or with which the Company or the Parent, as applicable, is merged or to which such sale, assignment, transfer, conveyance or other disposition is made will succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, conveyance or other disposition, the provisions of the Indenture referring to the Company or the Parent, as applicable, will refer instead to the successor corporation and not to the Company or the Parent, as applicable), and may exercise all rights and powers of, the Company or the Parent, as applicable, under the Indenture with the same effect as if such successor Person had been named as the Company or the Parent, as applicable, *provided* that in the case of a consolidation or merger between the Company and the Parent or the disposition of all or substantially all of the assets of the Parent to the Company, the successor corporation formed by such consolidation or into or with which the Company or the Parent, as applicable, is merged or to which such disposition is made shall be deemed to be the Parent for purposes of the Indenture.

In addition, the Parent and its Restricted Subsidiaries may not, directly or indirectly, lease all or substantially all of the properties or assets of the Parent and its Restricted Subsidiaries considered as one enterprise, in one or more related transactions, to any other Person. Clause (3) above of this covenant will not apply to (x) any merger, consolidation or sale, assignment, transfer, conveyance or other disposition of assets between or among the Parent or the Company and any of the Parent's Restricted Subsidiaries or (y) a merger of the Parent or the Company with an Affiliate solely for the purpose of reincorporating the Parent or the Company in another jurisdiction.

***Transactions with Affiliates***

The Parent will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into, make, amend, renew or extend any transaction, contract, agreement, understanding, loan, advance or Guarantee with, or for the benefit of, any Affiliate (each, an Affiliate Transaction), unless:

(1) such Affiliate Transaction is on terms that, taken as a whole, are no less favorable to the Parent or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm's-length transaction by the Parent or such Restricted Subsidiary with a Person that is not an Affiliate of the Parent or any of its Restricted Subsidiaries; and

(2) the Parent delivers to the Trustee:

(a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$25.0 million, a Board Resolution set forth in an Officer's Certificate certifying that such Affiliate Transaction or series of related Affiliate Transactions complies with this covenant and that such Affiliate Transaction or series of related Affiliate Transactions has been approved by a majority of the disinterested members of the Board of Directors of the Parent; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50.0 million, an opinion as to the fairness to the Parent or such Restricted Subsidiary of such Affiliate Transaction or series of related Affiliate Transactions from a financial point of view issued by an independent accounting, appraisal or investment banking firm of national standing.

The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

- (1) transactions between or among the Parent and/or its Restricted Subsidiaries;
- (2) payment of reasonable and customary fees to, and reasonable and customary indemnification and similar payments on behalf of, directors of the Parent;

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(3) Permitted Investments and Restricted Payments that are permitted by the provisions of the Indenture described above under the caption Restricted Payments ;

(4) any sale of Equity Interests (other than Disqualified Stock) of the Parent or receipt of any capital contribution from any Affiliate of the Parent;

(5) any transaction with any of the Parent's Designated Entities or Joint Venture Entities pursuant to which the Parent or any of its Restricted Subsidiaries provides or receives any of the following: operational, technical, administrative or other services; goods; intellectual property or any rights therein; co-location rights or other licensed rights; or leased or other real or personal property rights; *provided* that (a) if an Affiliate of the Parent, other than any of its Restricted Subsidiaries, owns any Equity Interests in such Designated Entity or Joint Venture Entity, such services, goods, or other rights provided to any such Designated Entity or Joint Venture Entity shall be provided at prices equal to or greater than the cost to the Parent or such Restricted Subsidiary of providing such services, goods or other rights, and (b) the Board of Directors of the Company determines in good faith that such transaction is in the best interests of the Company and the Restricted Subsidiaries;

(6) the provision of, or payment for, services in the ordinary course of business on terms no less favorable to the Parent and its Restricted Subsidiaries, taken as a whole, than those that would be obtained in a comparable transaction with an unrelated Person;

(7) transactions pursuant to agreements or arrangements in effect on the Issue Date, or any amendment, modification, or supplement thereto or replacement thereof, as long as such agreement or arrangement, as so amended, modified, supplemented or replaced, taken as a whole, is not more disadvantageous to the Parent and its Restricted Subsidiaries than the original agreement or arrangement in existence on the Issue Date;

(8) any employment, consulting, service or termination agreement, or indemnification arrangements, entered into by the Parent or any of its Restricted Subsidiaries with current or former directors, officers and employees of the Parent or any of its Restricted Subsidiaries and the payment of compensation to current or former directors, officers and employees of the Parent or any of its Restricted Subsidiaries (including amounts paid pursuant to employee benefit plans, employee stock option or similar plans), so long as such agreement, arrangement, plan or payment has been approved by a majority of the disinterested members of the Board of Directors of the Parent;

(9) issuances, purchases or repurchases of notes or other Indebtedness of the Parent or its Restricted Subsidiaries or solicitations of amendments, waivers or consents in respect of notes or such other Indebtedness, if such issuance, purchase, repurchase or solicitation is approved by a majority of the disinterested members of the Board of Directors of the Parent;

(10) payments or prepayments in respect of Indebtedness under Credit Facilities or solicitations of amendments, waivers or consents in respect of the Indebtedness under Credit Facilities, if such payment, prepayment or solicitation is on the same terms as those offered to each holder of such Indebtedness that is not an Affiliate of the Parent; and

(11) reasonable payments made for any financial advisory, financing, underwriting, placement or syndication services approved by the Board of Directors of the Parent in good faith.

***Designation of Restricted and Unrestricted Subsidiaries***

The Board of Directors of the Parent may designate any Restricted Subsidiary of the Parent, other than the Company, to be an Unrestricted Subsidiary; *provided* that:

(1) any Guarantee by the Parent or any Restricted Subsidiary thereof of any Indebtedness of the Subsidiary being so designated will be deemed to be an Incurrence of Indebtedness by the Parent or such Restricted Subsidiary (or both, if applicable) at the time of such designation, and such Incurrence of Indebtedness would be permitted under the covenant described above under the caption Incurrence of Indebtedness ;

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(2) the aggregate Fair Market Value of all outstanding Investments owned by the Parent and its Restricted Subsidiaries in the Subsidiary being so designated (including any Guarantee by the Parent or any Restricted Subsidiary thereof of any Indebtedness of such Subsidiary) and any commitments to make any such Investments will be deemed to be an Investment made as of the time of such designation and that such Investment would be permitted under the covenant described above under the caption Restricted Payments ;

(3) such Subsidiary does not hold any Liens on any property of the Parent or any Restricted Subsidiary thereof;

(4) the Subsidiary being so designated:

(a) is not party to any agreement, contract, arrangement or understanding with the Parent or any Restricted Subsidiary of the Parent unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Parent or such Restricted Subsidiary than those that could have been obtained at the time the agreement, contract, arrangement or understanding was entered into from Persons who are not Affiliates of the Parent (other than any such agreement, contract, arrangement or understanding permitted under the covenant described under the caption Certain Covenants Transactions with Affiliates ), and

(b) has not Guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Parent or any of its Restricted Subsidiaries, except to the extent such Guarantee or credit support would be released upon such designation; and

(5) no Default or Event of Default would be in existence following such designation.

Any designation of a Subsidiary of the Parent as an Unrestricted Subsidiary will be evidenced to the Trustee by filing with the Trustee the Board Resolution giving effect to such designation and an Officers Certificate certifying that such designation complied with the preceding conditions and was permitted by the Indenture. If, at any time, any Unrestricted Subsidiary would fail to meet any of the preceding requirements described in clause (4) above, it will thereafter cease to be an Unrestricted Subsidiary for purposes of the Indenture and any Indebtedness, Investments, or Liens on the property, of such Subsidiary will be deemed to be Incurred or made by a Restricted Subsidiary of the Parent as of such date and, if such Indebtedness,

Investments or Liens are not permitted to be Incurred or made as of such date under the Indenture, the Parent will be in default under the Indenture.

The Board of Directors of the Parent may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that:

(1) such designation will be deemed to be an Incurrence of Indebtedness by a Restricted Subsidiary of the Parent of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if such Indebtedness is permitted under the covenant described under the caption Incurrence of Indebtedness ;

(2) all outstanding Investments owned by such Unrestricted Subsidiary will be deemed to be made as of the time of such designation and such designation will only be permitted if such Investments would be permitted under the covenant described above under the caption Restricted Payments ;

(3) all Liens upon property or assets of such Unrestricted Subsidiary existing at the time of such designation would be permitted under the caption Liens ; and (4) no Default or Event of Default would be in existence following such designation.



*Guarantees*

The Parent will not permit any of its Restricted Subsidiaries, directly or indirectly, to Guarantee any other Indebtedness of the Parent, the Company or any Subsidiary Guarantor unless such Restricted Subsidiary is the Company or a Subsidiary Guarantor or simultaneously executes and delivers to the Trustee an Opinion of Counsel and a supplemental indenture providing for the Guarantee of the payment of the notes by such Restricted Subsidiary,

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which Guarantee will be *pari passu* with, or if such other Indebtedness is subordinated to the notes or any Note Guarantees senior to, such Subsidiary's Guarantee of such other Indebtedness.

A Subsidiary Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Subsidiary Guarantor is the surviving Person), another Person, other than the Parent, the Company or another Subsidiary Guarantor, unless:

(1) immediately after giving effect to that transaction, no Default or Event of Default exists; and (2) either:

(a) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger (if other than the Subsidiary Guarantor) is organized or existing under the laws of the United States, any state thereof or the District of Columbia and assumes all the obligations of that Subsidiary Guarantor under the Indenture, its Note Guarantee and the Registration Rights Agreement pursuant to a supplemental indenture satisfactory to the Trustee; or

(b) such sale or other disposition or consolidation or merger does not violate the provisions of the covenant described above under the caption **Repurchase at the Option of Holders** **Asset Sales** .

The Note Guarantee of a Subsidiary Guarantor will be automatically released:

(1) in connection with any sale or other disposition of Capital Stock of such Subsidiary Guarantor to a Person that is not (either before or after giving effect to such transaction) a Restricted Subsidiary of the Parent, if such sale or disposition does not violate the covenant described under the caption **Repurchase at the Option of Holders** **Asset Sales** and such Subsidiary Guarantor would no longer be a Restricted Subsidiary of the Parent as a result of such sale or other disposition;

(2) if the Parent designates such Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the applicable provisions of the Indenture;

(3) upon legal or covenant defeasance or satisfaction and discharge of the notes as permitted under the Indenture; or

(4) solely in the case of any Subsidiary Guarantor other than an Initial Guarantor, upon the release or discharge of all Guarantees by such Subsidiary Guarantor of all other Indebtedness of the Parent, the Company or any other Subsidiary Guarantor, except a discharge or release by or as a result of payment under such Guarantees.

***Business Activities***

The Parent will not, and will not permit any Restricted Subsidiary thereof to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Parent and its Restricted Subsidiaries taken as a whole.

***Payments for Consent***

The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the notes unless such consideration is offered to be paid and is paid to all Holders of the notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.



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### ***Reports***

Each of the Parent and the Company will furnish to the Trustee and, upon written request, to beneficial owners and prospective investors a copy of all of the information and reports referred to in clauses (1) and (2) below within the time periods specified in the Commission's rules and regulations (including all applicable extension periods):

(1) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if it were required to file such Forms, including a Management's Discussion and Analysis of Financial Condition and Results of Operations and, with respect to the annual information only, a report on the annual financial statements by its certified independent accountants; and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if it were required to file such reports.

Whether or not required by the Commission, each of the Parent and the Company will comply with the periodic reporting requirements of the Exchange Act and will file the reports specified in the preceding paragraph with the Commission within the time periods specified above unless the Commission will not accept such a filing. Each of the Parent and the Company agrees that it will not take any action for the purpose of causing the Commission not to accept any such filings. If, notwithstanding the foregoing, the Commission will not accept the Parent's or the Company's filings for any reason, the Parent or the Company, as the case may be, will post the reports referred to in the preceding paragraph on its website within the time periods that would apply if the Parent or the Company were required to file those reports with the Commission (including all applicable extension periods); provided, however, that the Trustee will have no obligation whatsoever to determine whether or not such filing has taken place.

Notwithstanding the foregoing, the availability of the reports referred to in clauses (1) and (2) above on the SEC's Electronic-Data Gathering, Analysis and Retrieval system (or any successor system, including the SEC's Interactive Data Electronic Application system) and the Parent's website within the time periods specified in the Commission's rules and regulations (including all applicable extension periods) will be deemed to satisfy this delivery obligation.

If the Parent has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by this covenant will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in Management's Discussion and Analysis of Financial Condition and Results of Operations, of the financial condition and results of operations of the Parent and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Parent.

Notwithstanding the foregoing, so long as the Parent (or any direct or indirect parent company of the Parent) is a Guarantor, the reports, information and other documents required to be filed and provided by the Company (or the Parent) as described above will be satisfied by those of the Parent (or any direct or indirect parent company of the Parent), so long as such filings would satisfy the Commission's requirements.

In addition, the Company and the Guarantors have agreed that, for so long as any notes remain outstanding and each of the Parent and the Company is not required to comply with the periodic reporting requirements of the Exchange Act, they will furnish to the Holders and to prospective investors, upon their written request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

### **Events of Default and Remedies**

Each of the following is an Event of Default:

- (1) default for 30 days in the payment when due of interest on, or Additional Interest, if any, with respect to, the notes;
- (2) default in payment when due (whether at maturity, upon acceleration, redemption, required repurchase or otherwise) of the principal of, or premium, if any, on the notes;

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(3) failure by the Parent, the Company or any Restricted Subsidiary of the Parent to comply with the provisions described under Reports for 120 days after written notice to the Parent by the Trustee or the holders of at least 25% in aggregate principal amount of notes then outstanding voting as a single class;

(4) failure by the Parent, the Company or any Restricted Subsidiaries of the Parent for 30 days after written notice to the Parent by the Trustee or the Holders of at least 25% in aggregate principal amount of notes then outstanding to comply with the provisions described under the captions Repurchase at the Option of Holders Change of Control or Repurchase at the Option of Holders Asset Sales , (in each case other than a failure to purchase notes which will constitute an Event of Default under clause (2) above) or the failure by the Parent or the Company to comply with the provisions described under Certain Covenants Merger, Consolidation or Sale of Assets ;

(5) failure by the Parent, the Company or any Restricted Subsidiary of the Parent for 60 days after written notice to the Parent by the Trustee or the Holders of at least 25% in aggregate principal amount of notes then outstanding to comply with any of the other agreements in the Indenture;

(6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness by the Parent, the Company or any Restricted Subsidiary that is a Significant Subsidiary of the Parent (or the payment of which is Guaranteed by the Parent, the Company or any Restricted Subsidiary that is a Significant Subsidiary of the Parent) whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, if that default:

(a) is caused by a failure to make any payment when due at the final maturity of such Indebtedness (a Payment Default ); or

(b) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the amount of any such Indebtedness, together with the amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$25 million or more;

(7) failure by the Parent, the Company or any Restricted Subsidiary that is a Significant Subsidiary of the Parent to pay final judgments (to the extent such judgments are not paid or covered by insurance provided by a reputable carrier) aggregating in excess of \$25 million, which judgments are not paid, discharged or stayed for a period of 60 days;

(8) except as permitted by the Indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee; and

(9) certain events of bankruptcy or insolvency with respect to the Parent, the Company, any Subsidiary Guarantor or any Significant Subsidiary of the Parent.

In the case of an Event of Default under clause (9), all outstanding notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding notes may declare all the notes to be due and payable immediately by notice in writing to the Company specifying the Event of Default.

Holders of the notes may not enforce the Indenture or the notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding notes may direct the Trustee

in writing in its exercise of any trust or power. The Trustee may withhold from Holders of the notes notice of any Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest or Additional Interest, if any) if it determines that withholding notice is in their interest.

The Holders of a majority in aggregate principal amount of the notes then outstanding by written notice to the Trustee may on behalf of the Holders of all of the notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or Additional Interest, if any on, or the principal of, the notes. The Holders of a majority in aggregate principal amount of the then outstanding notes will have the right to direct the time, method and place of conducting any proceeding

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for exercising any remedy available to the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders of notes not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from Holders of notes. A Holder may not pursue any remedy with respect to the Indenture or the notes unless:

- (1) the Holder gives the Trustee written notice of a continuing Event of Default;
- (2) the Holders of at least 25% in aggregate principal amount of then outstanding notes make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer the Trustee indemnity satisfactory to the Trustee against any costs, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding notes do not give the Trustee a direction that is inconsistent with the request.

However, such limitations do not apply to the right of any Holder of a note to receive payment of the principal of, premium or Additional Interest, if any, or interest on, such Note or to bring suit for the enforcement of any such payment, on or after the due date expressed in the notes, which right will not be impaired or affected without the consent of the Holder.

In the case of any Event of Default occurring by reason of any willful action or inaction taken or not taken by or on behalf of the Parent or the Company with the intention of avoiding payment of the premium that the Company would have had to pay if the Company then had elected to redeem the notes pursuant to the optional redemption provisions of the Indenture, an equivalent premium will also become and be immediately due and payable to the extent permitted by law upon the acceleration of the notes.

The Parent is required to deliver to the Trustee annually within 90 days after the end of each fiscal year a statement regarding compliance with the Indenture. Upon becoming aware of any Default or Event of Default, the Parent is required to deliver to the Trustee a statement specifying such Default or Event of Default, and in any event, no later than 5 Business Days after becoming so aware.

## **No Personal Liability of Directors, Officers, Employees and Stockholders**

No director, officer, employee, incorporator, stockholder, member, manager or partner of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or the Guarantors under the notes, the Indenture, the Note Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of notes by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the notes. The waiver may not be effective to waive liabilities under the federal securities laws.

## **Legal Defeasance and Covenant Defeasance**

The Company may, at its option and at any time, elect to have all of its obligations discharged with respect to the outstanding notes and all obligations of the Guarantors discharged with respect to their Note Guarantees ( Legal



Defeasance ) except for:

- (1) the rights of Holders of outstanding notes to receive payments in respect of the principal of, or interest or premium and Additional Interest, if any, on such notes when such payments are due from the trust referred to below;
- (2) the Company's obligations with respect to the notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payment and money for security payments held in trust;

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(3) the rights, powers, trusts, duties and immunities of the Trustee, and the Company's and the Guarantors' obligations in connection therewith; and

(4) the Legal Defeasance provisions of the Indenture.

In addition, the Company may, at its option and at any time, elect to have the obligations of the Company and the Guarantors released with respect to certain covenants that are described in the Indenture ( "Covenant Defeasance" ) and thereafter any omission to comply with those covenants will not constitute a Default or Event of Default with respect to the notes. In the event Covenant Defeasance occurs, certain events (not including non-payment, bankruptcy, receivership, rehabilitation and insolvency events) described under "Events of Default" will no longer constitute Events of Default with respect to the notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the notes, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, or interest and premium and Additional Interest, if any, on the outstanding notes on the Stated Maturity or on the applicable redemption date, as the case may be, and the Company must specify whether the notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Company will have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that (a) the Company has received from, or there has been published by, the Internal Revenue Service (the "IRS" ) a ruling or (b) since the Issue Date, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the Holders of the outstanding notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Company will have delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default will have occurred and be continuing either: (a) on the date of such deposit; or (b) insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending on the 123rd day after the date of deposit;

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under any material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(6) the Company must have delivered to the Trustee an Opinion of Counsel to the effect that, (1) assuming no intervening bankruptcy of the Company or any Guarantor between the date of deposit and the 123rd day following the deposit and assuming that no Holder is an "insider" of the Company under applicable bankruptcy law, after the 123rd day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, including Section 547 of the United States Bankruptcy Code and Section 15 of the New York Debtor and Creditor Law and (2) the creation of the

defeasance trust does not violate the Investment Company Act of 1940;

(7) the Company must deliver to the Trustee an Officers Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others;

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(8) if the notes are to be redeemed prior to their Stated Maturity, the Company must deliver to the Trustee irrevocable instructions to redeem all of the notes on the specified redemption date; and

(9) the Company must deliver to the Trustee an Officers Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

**Amendment, Supplement and Waiver**

Except as provided in the next two succeeding paragraphs, the Indenture or the notes may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes), and any existing default or compliance with any provision of the Indenture or the notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes).

Without the consent of each Holder affected, an amendment or waiver may not:

- (1) reduce the principal amount of notes whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the principal of or change the fixed maturity of any note or alter the provisions, or waive any payment, with respect to the redemption of the notes;
- (3) reduce the rate of or change the time for payment of interest on any note;
- (4) waive a Default or Event of Default in the payment of principal of, or interest, or premium or Additional Interest, if any, on, the notes (except a rescission of acceleration of the notes by the Holders of at least a majority in aggregate principal amount of the then outstanding notes and a waiver of the payment default that resulted from such acceleration);
- (5) make any note payable in money other than U.S. dollars;
- (6) make any change in the provisions of the Indenture relating to waivers of past Defaults or the rights of Holders of notes to receive payments of principal of, or interest or premium or Additional Interest, if any, on, the notes;
- (7) release any Guarantor from any of its obligations under its Note Guarantee or the Indenture, except in accordance with the terms of the Indenture;
- (8) impair the right to institute suit for the enforcement of any payment on or with respect to the notes or the Note Guarantees;
- (9) except as otherwise permitted under the covenants described under the captions Certain Covenants Merger, Consolidation and Sale of Assets and Certain Covenants Guarantees, consent to the assignment or transfer by the Company or any Guarantor of any of their rights or obligations under the Indenture;
- (10) contractually subordinate in right of payment the notes or any Note Guarantee to any other Indebtedness; or
- (11) make any change in the preceding amendment and waiver provisions.

Notwithstanding the preceding, without the consent of any Holder of notes, the Company, the Guarantors and the Trustee may amend or supplement the Indenture or the notes:

- (1) to cure any ambiguity, defect or inconsistency;
- (2) to provide for uncertificated notes in addition to or in place of certificated notes;

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- (3) to provide for the assumption of the Company's or any Guarantor's obligations to Holders of notes in the case of a merger or consolidation or sale of all or substantially all of the Company's or such Guarantor's assets;
- (4) to make any change that would provide any additional rights or benefits to the Holders of notes or that does not materially adversely affect the legal rights under the Indenture of any such Holder;
- (5) to comply with requirements of the Commission in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act;
- (6) to comply with the provisions described under Certain Covenants Guarantees ;
- (7) to evidence and provide for the acceptance of appointment by a successor Trustee;
- (8) to provide for the issuance of additional notes in accordance with the Indenture; or
- (9) to conform the text of the Indenture or the notes to any provision of the Description of New Notes to the extent such provision in the Description of New Notes was intended to be a verbatim recitation of a provision of the Indenture, as evidenced by an Officers Certificate.

**Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect as to all notes issued thereunder, when:

(1) either:

- (a) all notes that have been authenticated (except lost, stolen or destroyed notes that have been replaced or paid and notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company) have been delivered to the Trustee for cancellation; or
- (b) all notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Company or any of the Guarantors has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the notes not delivered to the Trustee for cancellation for principal, premium and Additional Interest, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default will have occurred and be continuing on the date of such deposit or will occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any of the Guarantors is a party or by which the Company or any of the Guarantors is bound;

(3) the Company or any of the Guarantors has paid or caused to be paid all sums payable by it under the Indenture; and

(4) the Company has delivered irrevocable written instructions to the Trustee under the Indenture to apply the deposited money toward the payment of the notes at maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

**Concerning the Trustee**

If the Trustee becomes a creditor of the Company or any Guarantor, the Indenture and the Trust Indenture Act limit its right to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions; however, if it

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acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue or resign.

The Indenture provides that in case an Event of Default will occur and be continuing, the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent person in the conduct of such person's own affairs. Subject to such provisions, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any Holder of notes, unless such Holder will have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

## **Book-Entry, Delivery and Form**

Except as set forth below, new notes will be issued in registered, global form in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The new notes will be issued in the form of one or more registered notes in book-entry form (collectively, the Global Notes).

The Global Notes will be deposited upon issuance with the Trustee as custodian for The Depository Trust Company (DTC), and registered in the name of DTC or its nominee, in each case for credit to an account of a direct or indirect participant in DTC as described below.

Except as set forth below, the Global Notes may be transferred, in whole and not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Notes may be exchanged for Notes in certificated form. See Exchange of Book-Entry Notes for Certificated Notes.

Transfers of beneficial interests in the Global Notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants (including, if applicable, those of Euroclear Bank, S.A./N.V., as operator of the Euroclear System (Euroclear) and Clearstream Banking, S.A. (Clearstream)), which may change from time to time.

## **Depository Procedures**

The following description of the operations and procedures of DTC, Euroclear and Clearstream are provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them. The Company takes no responsibility for these operations and procedures and urges investors to contact the system or their participants directly to discuss these matters.

DTC has advised the Company that DTC is a limited-purpose trust company created to hold securities for its participating organizations (collectively, the Participants) and to facilitate the clearance and settlement of transactions in those securities between Participants through electronic book-entry changes in accounts of its Participants. The Participants include securities brokers and dealers (including the Initial Purchasers), banks, trust companies, clearing corporations and certain other organizations. Access to DTC's system is also available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (collectively, the Indirect Participants). Persons who are not Participants may beneficially own securities held by or on behalf of DTC only through the Participants or the Indirect Participants. The ownership interests in, and transfers of ownership interests in, each security held by or on behalf of DTC are recorded on the records of the Participants and Indirect Participants.

DTC has also advised the Company that, pursuant to procedures established by it:

(1) upon deposit of the Global Notes, DTC will credit the accounts of Participants designated by the Initial Purchasers with portions of the principal amount of the Global Notes; and



(2) ownership of these interests in the Global Notes will be shown on, and the transfer of ownership thereof will be effected only through, records maintained by DTC (with respect to the Participants) or by the Participants and the Indirect Participants (with respect to other owners of beneficial interest in the Global Notes).

All interests in a Global Note, including those held through Euroclear or Clearstream, may be subject to the procedures and requirements of DTC. Those interests held through Euroclear or Clearstream may also be subject to

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the procedures and requirements of such systems. The laws of some states require that certain persons take physical delivery in definitive form of securities that they own. Consequently, the ability to transfer beneficial interests in a Global Note to such persons will be limited to that extent. Because DTC can act only on behalf of Participants, which in turn act on behalf of Indirect Participants, the ability of a person having beneficial interest in a Global Note to pledge such interests to persons that do not participate in the DTC system, or otherwise take actions in respect of such interests, may be affected by the lack of a physical certificate evidencing such interests.

Except as described below, owners of interests in the Global Notes will not have notes registered in their names, will not receive physical delivery of notes in certificated form and will not be considered the registered owners or Holders thereof under the Indenture for any purpose.

Payments in respect of the principal of, and interest and premium and Additional Interest, if any, on a Global Note registered in the name of DTC or its nominee will be payable to DTC in its capacity as the registered Holder under the Indenture. Under the terms of the Indenture, the Company and the Trustee will treat the Persons in whose names the notes, including the Global Notes, are registered as the owners thereof for the purpose of receiving payments and for all other purposes. Consequently, neither the Company, the Trustee nor any agent of the Company or the Trustee has or will have any responsibility or liability for:

- (1) any aspect of DTC's records or any Participant's or Indirect Participant's records relating to or payments made on account of beneficial ownership interest in the Global Notes or for maintaining, supervising or reviewing any of DTC's records or any Participant's or Indirect Participant's records relating to the beneficial ownership interests in the Global Notes; or
- (2) any other matter relating to the actions and practices of DTC or any of its Participants or Indirect Participants.

DTC has advised the Company that its current practice, upon receipt of any payment in respect of securities such as the notes (including principal and interest), is to credit the accounts of the relevant Participants with the payment on the payment date unless DTC has reason to believe it will not receive payment on such payment date. Each relevant Participant is credited with an amount proportionate to its beneficial ownership of an interest in the principal amount of the relevant security as shown on the records of DTC. Payments by the Participants and the Indirect Participants to the beneficial owners of notes will be governed by standing instructions and customary practices and will be the responsibility of the Participants or the Indirect Participants and will not be the responsibility of DTC, the Trustee or the Company. Neither the Company nor the Trustee will be liable for any delay by DTC or any of its Participants in identifying the beneficial owners of the notes, and the Company and the Trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes. Transfers between Participants in DTC will be effected in accordance with DTC's procedures, and will be settled in same-day funds, and transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures.

Subject to compliance with the transfer restrictions applicable to the notes described herein, cross-market transfers between the Participants in DTC, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected through DTC in accordance with DTC's rules on behalf of Euroclear or Clearstream, as the case may be, by its respective depository; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to its respective depository to take action to effect final settlement on its behalf by delivering or receiving interests in the relevant Global Note in DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for

Euroclear or Clearstream.

DTC has advised the Company that it will take any action permitted to be taken by a Holder of notes only at the direction of one or more Participants to whose account DTC has credited the interests in the Global Notes and only in respect of such portion of the aggregate principal amount of the notes as to which such Participant or Participants

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has or have given such direction. However, if there is an Event of Default under the notes, DTC reserves the right to exchange the Global Notes for legended notes in certificated form, and to distribute such notes to its Participants.

Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures to facilitate transfers of interests in the Global Notes among participants in DTC, Euroclear and Clearstream, they are under no obligation to perform or to continue to perform such procedures, and may discontinue such procedures at any time. Neither the Company nor the Trustee nor any of their respective agents will have any responsibility for the performance by DTC, Euroclear or Clearstream or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

### **Exchange of Global Notes for Certificated Notes**

A Global Note is exchangeable for definitive notes in registered certificated form ( Certificated Notes ) if:

- (1) DTC (a) notifies the Company that it is unwilling or unable to continue as depository for the Global Notes or (b) has ceased to be a clearing agency registered under the Exchange Act, and in each case the Company fails to appoint a successor depository;
- (2) the Company, at its option, notifies the Trustee in writing that it elects to cause the issuance of Certificated Notes (DTC has advised the Company that, in such event, under its current practices, DTC would notify its participants of the Company's request, but will only withdraw beneficial interests from a Global Note at the request of each DTC participant); or
- (3) there will have occurred and be continuing a Default or Event of Default with respect to the notes.

In addition, beneficial interests in a Global Note may be exchanged for Certificated Notes upon prior written notice given to the Trustee by or on behalf of DTC in accordance with the Indenture. In all cases, Certificated Notes delivered in exchange for any Global Note or beneficial interests in Global Notes will be registered in the names, and issued in any approved denominations, requested by or on behalf of the depository (in accordance with its customary procedures).

### **Exchange of Certificated Notes for Global Notes**

Certificated Notes may not be exchanged for beneficial interests in any Global Note unless the transferor first delivers to the Trustee a written certificate (in the form provided in the Indenture) to the effect that such transfer will comply with the appropriate transfer restrictions applicable to such Notes.

### **Same Day Settlement and Payment**

The Company will make payments in respect of the new notes represented by the Global Notes (including principal, premium, if any, interest and Additional Interest, if any) by wire transfer of immediately available funds to the accounts specified by the Global Note Holder. The Company will make all payments of principal, interest and premium and Additional Interest, if any, with respect to Certificated Notes by wire transfer of immediately available funds to the accounts specified by the Holders thereof or, if no such account is specified, by mailing a check to each such Holder's registered address. The new notes represented by the Global Notes are expected to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such new notes will, therefore, be required by DTC to be settled in immediately available funds. The Company expects that secondary trading in any Certificated Notes will also be settled in immediately available funds. Because of time zone differences, the securities account of a Euroclear or Clearstream participant purchasing an interest in a Global Note from a

Participant in DTC will be credited, and any such crediting will be reported to the relevant Euroclear or Clearstream participant, during the securities settlement processing day (which must be a business day for Euroclear and Clearstream) immediately following the settlement date of DTC. DTC has advised the Company that cash received in Euroclear or Clearstream as a result of sales of interests in a Global Note by or through a Euroclear or Clearstream participant to a Participant in DTC will be received with value on the settlement date of DTC but will be available in the relevant Euroclear or Clearstream cash account only as of the business day for Euroclear or Clearstream following DTC's settlement date.

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### **Certain Definitions**

Set forth below are certain defined terms used in the Indenture. Reference is made to the Indenture for a full disclosure of all such terms, as well as any other capitalized terms used herein for which no definition is provided.

**Acquired Indebtedness** means Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary or merges with or into the Parent or any of its Restricted Subsidiaries or which is assumed by the Parent or any of its Restricted Subsidiaries in connection with an Asset Acquisition whether or not incurred in connection with, or in anticipation of, such Person becoming a Restricted Subsidiary or such Asset Acquisition. The term **Acquired Indebtedness** does not include Indebtedness of a Person which is redeemed, defeased, retired or otherwise repaid at the time of or immediately upon consummation of the transactions by which such Person becomes a Restricted Subsidiary or such Asset Acquisition.

**Additional Interest** means all additional interest owing on the notes pursuant to the Registration Rights Agreement.

**Affiliate** of any specified Person means (1) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, (2) any executive officer or director of such specified Person or (3) any Designated Entity. For purposes of this definition, **control**, as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms **controlling**, **controlled by** and **under common control with** will have correlative meanings.

**Applicable Premium** means, with respect to a note at any date of redemption, the greater of (i) 1.0% of the principal amount of such note and (ii) the excess of (A) the present value at such date of redemption of (1) the redemption price of such note at October 15, 2015 (such redemption price being described under **Optional Redemption**) plus (2) all remaining required interest payments due on such note through October 15, 2015 (excluding accrued but unpaid interest to the date of redemption), computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (B) the principal amount of such note.

**Asset Acquisition** means:

- (1) an Investment by the Parent or any of its Restricted Subsidiaries in any other Person pursuant to which such Person shall become a Restricted Subsidiary or shall be merged into or consolidated with the Parent or any of its Restricted Subsidiaries but only if such Person's primary business is a Permitted Business,
- (2) an acquisition by the Parent or any of its Restricted Subsidiaries of the property and assets of any Person other than the Parent or any of its Restricted Subsidiaries that constitute all or substantially all of a division, operating unit or line of business of such Person but only if the property and assets so acquired is a Permitted Business,
- (3) an Investment by a Designated Entity in any other Person pursuant to which such Person shall (a) become a Subsidiary of such Designated Entity or (b) be merged into or consolidated with such Designated Entity, but, in the case of (a) or (b), only if such Person's primary business is a Permitted Business, or
- (4) an acquisition by a Designated Entity of the property and assets of any Person other than the Parent, any of its Restricted Subsidiaries or any other Designated Entity that constitute all or substantially all of a division, operating unit or line of business of such Person but only if the property and assets so acquired is a Permitted Business.

**Asset Disposition** means the sale or other disposition by:

(1) the Parent or any of its Restricted Subsidiaries other than to the Parent or another Restricted Subsidiary of (a) all or substantially all of the Capital Stock of any Restricted Subsidiary or any Designated Entity or (b) all or substantially all of the assets that constitute a division, operating unit or line of business of the Parent or any of its Restricted Subsidiaries, or

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(2) a Designated Entity other than to the Parent, any of its Restricted Subsidiaries or any other Designated Entity of (a) all or substantially all of the Capital Stock of a Subsidiary of such Designated Entity or (b) all or substantially all of the assets that constitute a division, operating unit or line of business of such Designated Entity.

*Asset Sale* means:

(1) the sale, lease, conveyance or other disposition of any assets, other than a transaction governed by the provisions of the Indenture described above under the caption Repurchase at the Option of Holders Change of Control and/or the provisions described above under the caption Certain Covenants Merger, Consolidation or Sale of Assets ; and

(2) (a) the issuance of Equity Interests by any of the Parent's Restricted Subsidiaries or (b) the sale by the Parent or any Restricted Subsidiary thereof of any Equity Interests it owns in any of its Subsidiaries (other than directors' qualifying shares and shares issued to foreign nationals to the extent required by applicable law) or Designated Entities.

Notwithstanding the preceding, the following items will be deemed not to be Asset Sales:

(1) any single transaction or series of related transactions that involves assets or Equity Interests having a Fair Market Value of less than \$15.0 million;

(2) a transfer of assets or Equity Interests between or among the Parent and its Restricted Subsidiaries;

(3) an issuance of Equity Interests by a Restricted Subsidiary of the Parent to the Parent or to another Restricted Subsidiary;

(4) the sale, lease, sublease, license, sublicense, consignment, conveyance or other disposition of equipment, inventory, accounts receivable or other assets in the ordinary course of business or to any Designated Entity or Joint Venture Entity in compliance with the provisions under Certain Covenants Transactions with Affiliates ;

(5) the sale or other disposition of Cash Equivalents;

(6) dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings;

(7) a Restricted Payment that is permitted by the covenant described above under the caption Certain Covenants Restricted Payments and any Permitted Investment;

(8) any sale, lease, conveyance or other disposition of any property or equipment that has become damaged, worn out or obsolete;

(9) the creation of a Lien not prohibited by the Indenture; and

(10) the licensing of intellectual property or other general intangibles (other than FCC Licenses) to third persons on terms approved by the Board of Directors of the Parent or the Company in good faith and in the ordinary course of business.

*Attributable Debt* in respect of a Sale and Leaseback Transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value will be calculated using a discount rate equal to the rate of interest implicit



in such transaction, determined in accordance with GAAP.

**Beneficial Owner** has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular person (as that term is used in Section 13(d) (3) of the Exchange Act), such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms **Beneficially Owns** and **Beneficially Owned** will have a corresponding meaning.

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***Board of Directors*** means:

- (1) with respect to a corporation, the board of directors of the corporation or, except in the context of the definitions of Change of Control, a duly authorized committee thereof;
- (2) with respect to a partnership, the Board of Directors of the general partner of the partnership;
- (3) with respect to a limited liability company, the managing member or members or any controlling committee or board of directors of such company or of the sole member or of the managing member thereof; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

***Board Resolution*** means a resolution certified by the Secretary or an Assistant Secretary of the Parent, or the Company, as applicable, to have been duly adopted by the Board of Directors of the Parent or the Company, as applicable, and to be in full force and effect on the date of such certification.

***Business Day*** means any day other than a Legal Holiday.

***Capital Lease Obligation*** means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

***Capital Stock*** means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

***Cash Equivalents*** means:

- (1) United States dollars;
- (2) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States of America is pledged in support thereof), having maturities, unless such securities are deposited to defease any Indebtedness, of not more than two years of the date of acquisition thereof;
- (3) demand deposits, certificates of deposit and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of \$500 million and a rating at the time of acquisition thereof of P-1 or better from Moody's or A-1 or better from S&P;

(4) commercial paper outstanding at any time issued by any Person organized under the laws of any state of the United States of America and rated at the time of acquisition thereof P-1 or better from Moody's or A-1 or better from S&P and in each case with maturities of not more than 270 days from the date of acquisition thereof;

(5) securities with final maturities of not more than two years from the date of acquisition thereof issued or fully guaranteed by any state, territory or municipality of the United States of America or by any political subdivision, taxing authority, agency or instrumentality thereof and rated at least A by S&P or A by Moody's;

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(6) insured demand deposits made in the ordinary course of business and consistent with the Parent's or its Subsidiaries' customary cash management policy in any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof;

(7) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in clauses (2), (3) and (4) above entered into with any financial institution meeting the qualifications specified in clause (3) above; and

(8) investments, classified in accordance with GAAP as current assets of the Parent or any of its Restricted Subsidiaries, in money market funds or investment programs registered under the Investment Company Act of 1940, the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (2) through (7) of this definition.

*Change of Control* means the occurrence of any of the following:

(1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Parent and its Restricted Subsidiaries, taken as a whole, to any person (as that term is used in Section 13(d) (3) of the Exchange Act);

(2) the adoption of a plan relating to the liquidation or dissolution of the Company or the Parent;

(3) any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries, and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the Beneficial Owner, directly or indirectly, of 35% or more of the Voting Stock of the Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right to the extent that such option right is exercisable within 60 days after the date of determination), other than any transaction where immediately after such transaction the Parent will be a wholly owned Subsidiary of a Person, where no person or group (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) is, directly or indirectly, the Beneficial Owner of 35% or more of the voting power of the Voting Stock of such Person;

(4) during any period of 12 consecutive months, a majority of the members of the Board of Directors or other equivalent governing body of the Company or the Parent cease to be composed of individuals (i) who were members of the Board of Directors or equivalent governing body on the first day of such period, (ii) whose election or nomination to that Board of Directors or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that Board of Directors or equivalent governing body, (iii) whose election or nomination to that Board of Directors or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that Board of Directors or equivalent governing body or (iv) in the case of the Company, whose election or nomination to that Board of Directors or equivalent governing body was approved by the Parent;

(5) the Company or the Parent consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into the Company or the Parent, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company, or the Parent is converted into or exchanged for cash, securities or other property, other than any such transaction where immediately after such transaction (i) no person or group (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) becomes, directly or indirectly, the Beneficial Owner of 35% or more of the voting power of the Voting Stock of the surviving or transferee Person or (ii) the Company or

the Parent will be a wholly owned Subsidiary of a Person, where no person or group (as such terms are used in Section 13(d) and 14(d) of the Exchange Act) is, directly or indirectly, the Beneficial Owner of 35% or more of the voting power of the Voting Stock of such Person; or

(6) the Parent ceases to own 100% of the Equity Interests of the Company (unless the Parent and the Company are merged).

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**Commission** means the United States Securities and Exchange Commission.

**Common Stock** means, with respect to any Person, any Capital Stock (other than Preferred Stock) of such Person, whether outstanding on the Issue Date or issued thereafter.

**Consolidated Cash Flow** means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*:

(1) provision for taxes based on income or profits of such Person, its Restricted Subsidiaries and its Designated Entities for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*

(2) Fixed Charges of such Person, its Restricted Subsidiaries and its Designated Entities for such period, to the extent that any such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*

(3) depreciation, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person, its Restricted Subsidiaries and its Designated Entities for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income, such other non-cash expenses to include, without limitation, impairment charges associated with goodwill, wireless licenses, other indefinite-lived assets and long-lived assets, and stock-based compensation awards; *plus*

(4) the amount of any Restructuring Charges or reasonable expenses or charges related to any proposed or consummated Equity Offering, Investment, acquisition, recapitalization or Incurrence of Indebtedness permitted to be incurred under the Indenture, in each case deducted in computing such Consolidated Net Income; *minus*

(5) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue consistent with past practice;

in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding the preceding, the provision for taxes based on the income or profits of, the Fixed Charges of and the depreciation and amortization and other non-cash expenses of, a Restricted Subsidiary of the Parent or a Designated Entity will be added to Consolidated Net Income to compute Consolidated Cash Flow of the Parent (A) in the same proportion that the Net Income of such Restricted Subsidiary or such Designated Entity was added to compute such Consolidated Net Income of the Parent and (B) only to the extent that a corresponding amount would be permitted at the date of determination to be dividended or distributed to the Parent by such Restricted Subsidiary or such Designated Entity without prior governmental approval (that has not been obtained), and without direct or indirect restriction pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Subsidiary or its stockholders, or such Designated Entity or holders of its Capital Stock, as applicable (other than restrictions on dividends or distributions in respect of Existing Designated Entities that are contained in agreements or instruments existing on the Issue Date and any amendment, restatement, modification, renewal, refunding, replacement or refinancing thereof, *provided* that such corresponding restrictions on dividends or distributions, as the case may be, included therein are no more restrictive than the applicable restrictions on dividends or distributions in the agreement or instrument being amended, restated, modified, renewed, refunded, replaced or refinanced).

***Consolidated Leverage Ratio*** means on any Transaction Date, the ratio of:

- (1) the aggregate amount of Indebtedness of the Parent, its Restricted Subsidiaries and its Designated Entities on a consolidated basis outstanding on such Transaction Date, to
- (2) the aggregate amount of Consolidated Cash Flow of the Parent, its Restricted Subsidiaries and its Designated Entities for the Four Quarter Period.

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In determining the Consolidated Leverage Ratio:

- (1) pro forma effect shall be given to any Indebtedness that is to be incurred or repaid on the Transaction Date;
- (2) pro forma effect shall be given to Asset Dispositions and Asset Acquisitions (including giving pro forma effect to the application of proceeds of any Asset Disposition) that occur during the Reference Period as if they had occurred and such proceeds had been applied on the first day of such Reference Period; and
- (3) pro forma effect shall be given to asset dispositions and asset acquisitions (including giving pro forma effect to the application of proceeds of any asset disposition) that have been made by any Person that has become a Restricted Subsidiary of the Parent or a Designated Entity or has been merged with or into the Parent, any Restricted Subsidiary or any Designated Entity during such Reference Period and that would have constituted Asset Dispositions or Asset Acquisitions had such transactions occurred when such Person was a Restricted Subsidiary or a Designated Entity, as the case may be, as if such asset dispositions or asset acquisitions were Asset Dispositions or Asset Acquisitions that occurred on the first day of such Reference Period.

To the extent that pro forma effect is given to an Asset Acquisition or Asset Disposition, such pro forma calculation shall be based upon the four full fiscal quarters immediately preceding the Transaction Date of the Person, or division, operating unit or line of business of the Person, that is acquired or disposed of for which financial information is available, and Consolidated Cash Flow will be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, but without giving effect to clause (3) of the proviso set forth in the definition of Consolidated Net Income.

***Consolidated Net Income*** means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person, its Subsidiaries and its Designated Entities for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that:

- (1) the Net Income of any Person that is not a Restricted Subsidiary or a Designated Entity or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or distributions paid in cash to the specified Person or a Restricted Subsidiary thereof;
- (2) the Net Income of any Restricted Subsidiary that is not a Subsidiary Guarantor or any Designated Entity will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary or that Designated Entity, as applicable, of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its equityholders, or such Designated Entity or holders of its Capital Stock, as applicable (other than restrictions on dividends or distributions in respect of Existing Designated Entities that are contained in agreements or instruments existing on the Issue Date and any amendment, restatement, modification, renewal, refunding, replacement or refinancing thereof, *provided* that such corresponding restrictions on dividends or distributions, as the case may be, included therein are no more restrictive than the applicable restrictions on dividends or distributions in the agreement or instrument being amended, restated, modified, renewed, refunded, replaced or refinanced);
- (3) the Net Income of any Person acquired during the specified period for any period prior to the date of such acquisition will be excluded;
- (4) the cumulative effect of a change in accounting principles will be excluded;



(5) unrealized losses and gains from Hedging Obligations, including those resulting from the application of the Financial Accounting Standards Board Accounting Standards Codification (ASC) 815 will be excluded;

(6) any non-cash compensation charge or expense realized from grants of stock, stock appreciation or similar rights, stock options or other rights to officers, directors and employees will be excluded; and

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(7) notwithstanding clause (1) above, the Net Income or loss of any Unrestricted Subsidiary will be excluded, whether or not distributed to the specified Person or one of its Subsidiaries.

***Contribution Indebtedness*** means, Indebtedness in an aggregate principal amount at any one time outstanding, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge such Indebtedness, not to exceed 150% of the aggregate amount of all Net Equity Proceeds.

***Credit Facilities*** means, one or more debt facilities, commercial paper facilities or indentures, in each case with banks or other institutional lenders or a trustee, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables), letters of credit or issuances of notes, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

***Default*** means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

***Designated Entity*** means a Person that is designated as a Designated Entity by the Board of Directors of the Parent pursuant to a Board Resolution; *provided* that (i) at the time of the making of the initial investment by the Parent or any of its Restricted Subsidiaries in such Person, such Person (A) holds or is intended to hold, whether directly or indirectly through one or more subsidiaries, one or more FCC Licenses as, or is eligible to participate in an FCC auction or auctions for FCC Licenses and/or purchase of FCC Licenses or spectrum in an after-market therefor, from time to time as, a Designated Entity, Entrepreneur, Small Business, or Very Small Business, as those terms are defined under FCC rules and regulations as in effect at the time of such initial investment in such Person or (B) is a wholly owned Subsidiary of a Person meeting the requirements of subclause (A) above; (ii) the Parent and its Restricted Subsidiaries own a majority (but less than 100%) of the equity interests of such Person (or in the case of a Person referred to in subclause (i) (B), the Person referred to in subclause (i) (A) of which such Person is a wholly owned Subsidiary); (iii) the accounts of such Person are consolidated with those of the Parent and its Subsidiaries in accordance with GAAP; and (iv) such Person's primary business is a Permitted Business.

***Disqualified Stock*** means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is one year after the date on which the notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Parent to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Parent may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the covenant described above under the caption Certain Covenants Restricted Payments. The term Disqualified Stock will also include any options, warrants or other rights that are convertible into Disqualified Stock or that are redeemable at the option of the holder, or required to be redeemed, prior to the date that is one year after the date on which the notes mature.

***Equity Interests*** means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

***Equity Offering*** means any public or private placement of Capital Stock (other than Disqualified Stock) of the Parent (other than pursuant to a registration statement on Form S-8 or otherwise relating to equity securities issuable under any employee benefit plan of the Parent) to any Person other than any Subsidiary thereof.

***Existing Designated Entity*** means Denali Spectrum, LLC and its Subsidiaries.

***Existing Indebtedness*** means the aggregate amount of Indebtedness of the Parent and its Restricted Subsidiaries (other than Indebtedness under the Company's 7.75% senior secured notes due 2016 or under the notes and the related Note Guarantees) in existence on the Issue Date after giving effect to the application of the proceeds of the old notes (including the repurchase or redemption of all outstanding 9.375% senior notes due 2014 of the Company), until such amounts are repaid.

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**Fair Market Value** means the price that would be paid in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by an Officer of the Parent or by the Board of Directors of the Parent, evidenced by an Officers' Certificate or Board Resolution, as applicable.

**FCC** means the Federal Communications Commission (or any federal agency that may succeed to its jurisdiction).

**FCC Licenses** means broadband personal communications service licenses, advanced wireless services licenses or other licenses, permits or authorizations for the provision of wireless telecommunications services or operation of wireless telecommunications systems issued by the FCC from time to time.

**Fitch** means Fitch Inc., a Subsidiary of Fimalac, S.A.

**Fixed Charges** means, with respect to any specified Person for any period, the sum, without duplication, of:

- (1) the consolidated interest expense of such Person, its Restricted Subsidiaries and its Designated Entities for such period, whether paid or accrued, including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations; *plus*
- (2) the consolidated interest of such Person, its Restricted Subsidiaries and its Designated Entities that was capitalized during such period; *plus*
- (3) any interest expense on Indebtedness of another Person that is Guaranteed by such Person, any of its Restricted Subsidiaries or any of its Designated Entities or secured by a Lien on assets of such Person, any of its Restricted Subsidiaries or any of its Designated Entities whether or not such Guarantee or Lien is called upon; *plus*
- (4) the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of Disqualified Stock of such Person or Disqualified Stock or Preferred Stock of any of its Restricted Subsidiaries or any of its Designated Entities other than dividends on Equity Interests payable solely in Equity Interests (other than Disqualified Stock) of the Parent or to the Parent or a Restricted Subsidiary of the Parent, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person (if such Person is part of a consolidated group, then such tax rate shall be computed on a standalone basis for such Person), expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

**Forward Sale Agreements** means collectively (a) that certain Confirmation of Forward Sale Transaction, dated as of August 15, 2006, between the Parent and Goldman Sachs Financial Markets, L.P. and (b) that certain Confirmation of Forward Sale Transaction, dated as of August 15, 2006, between the Parent and Citibank, N.A.

**Four Quarter Period** means, with respect to any specified Transaction Date, the four fiscal quarters immediately prior to the Transaction Date for which internal financial statements of the Parent are available.

**GAAP** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, the opinions and pronouncements of the Public Company Accounting Oversight Board and in the statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a

significant segment of the accounting profession, which were in effect on the Issue Date.

***Government Securities*** means securities that are direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged.

***Guarantee*** means, as to any Person, a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way

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of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness of another Person.

***Guarantors*** means:

(1) the Initial Guarantors; and

(2) any other Subsidiary that executes a Note Guarantee in accordance with the provisions of the Indenture; and their respective successors and assigns until released from their obligations under their Note Guarantees and the Indenture in accordance with the terms of the Indenture.

***Hedging Obligations*** means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and other agreements or arrangements with respect to interest rates;

(2) commodity swap agreements, commodity option agreements, forward contracts and other agreements or arrangements with respect to commodity prices; and (3) foreign exchange contracts, currency swap agreements and other agreements or arrangements with respect to foreign currency exchange rates.

***Holder*** means a Person in whose name a note is registered.

***Incur*** means, with respect to any Indebtedness, to incur, create, issue, assume, Guarantee or otherwise become directly or indirectly liable for or with respect to, or become responsible for, the payment of, contingently or otherwise, such Indebtedness (and *Incurrence* and *Incurred* will have meanings correlative to the foregoing); *provided* that (1) any Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary of the Parent or a Designated Entity will be deemed to be Incurred by such Restricted Subsidiary or such Designated Entity at the time it becomes a Restricted Subsidiary of the Parent or a Designated Entity and (2) neither the accrual of interest nor the accretion of original issue discount nor the payment of interest in the form of additional Indebtedness with the same terms and the payment of dividends on Disqualified Stock or Preferred Stock in the form of additional shares of the same class of Disqualified Stock or Preferred Stock (to the extent provided for when the Indebtedness or Disqualified Stock or Preferred Stock on which such interest or dividend is paid was originally issued) will be considered an Incurrence of Indebtedness; *provided* that in each case the amount thereof is for all other purposes included in the Fixed Charges and Indebtedness of the Parent, its Restricted Subsidiaries or its Designated Entities as accrued.

***Indebtedness*** means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(3) in respect of banker's acceptances;

(4) in respect of Capital Lease Obligations and Attributable Debt;

(5) in respect of the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed, except any such balance that constitutes an

accrued expense or trade payable and excluding any earnout obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP;

(6) representing Hedging Obligations;

(7) representing Disqualified Stock valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued dividends; or

(8) in the case of a Subsidiary of such Person, representing Preferred Stock valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued dividends.

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In addition, the term **Indebtedness** includes (x) all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person), *provided* that the amount of such Indebtedness will be the lesser of (A) the Fair Market Value of such asset at such date of determination and (B) the amount of such Indebtedness, and (y) to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person. For purposes hereof, the maximum fixed repurchase price of any Disqualified Stock or Preferred Stock which does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock, as applicable, as if such Disqualified Stock or Preferred Stock were repurchased on any date on which Indebtedness will be required to be determined pursuant to the Indenture.

The amount of any Indebtedness outstanding as of any date (x) will be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation, and (y) will be:

- (1) the accreted value thereof, in the case of any Indebtedness issued with original issue discount; and
- (2) the principal amount thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness.

**Initial Guarantors** means the Parent and all of the Restricted Subsidiaries of the Parent existing on the Issue Date that guarantee Indebtedness of the Parent, the Company or another Initial Guarantor. As of the Issue Date, Cricket License Company, LLC was the only Initial Guarantor other than the Parent.

**Initial Purchasers** means Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Deutsche Bank Securities Inc.

**Investment Grade** means

- (1) with respect to Moody's (or any successor company acquiring all or substantially all of its assets), a rating of Baa3 (or its equivalent under any successor rating category of Moody's) or better;
- (2) with respect to S&P (or any successor company acquiring all or substantially all of its assets), a rating of BBB- (or its equivalent under any successor rating category of S&P) or better;
- (3) with respect to Fitch (or any successor company acquiring all or substantially all of its assets), a rating of BBB- (or its equivalent under any successor rating category of Fitch) or better; and
- (4) if any Rating Agency ceases to exist or ceases to rate the notes for reasons outside of the control of the Company, the equivalent investment grade credit rating from any other nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Company as a replacement agency.

**Investments** means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the form of loans or other extensions of credit (including Guarantees), advances, capital contributions (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.



If the Parent or any Restricted Subsidiary of the Parent sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Parent such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Parent, the Parent will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Investment in such Subsidiary not sold or disposed of. The acquisition by the Parent or any Restricted Subsidiary of the Parent of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Parent or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investment held by the acquired Person in such third Person.

***Issue Date*** means the date of original issuance of the notes under the Indenture.

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**Joint Venture Entity** means any Person other than a Restricted Subsidiary in which the Parent or any of its Restricted Subsidiaries has made a Permitted Investment and/or a Restricted Investment permitted by the provisions of the Indenture described above under the caption Certain Covenants Restricted Payments , of which more than 10% of the Capital Stock of such Person is owned, directly or indirectly, by the Parent or any of its Restricted Subsidiaries.

**Legal Holiday** means a Saturday, a Sunday or a day on which banking institutions in The City of New York or at a place of payment are authorized or required by law, regulation or executive order to remain closed.

**Lien** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in such asset and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

**Moody's** means Moody's Investors Service, Inc. and its successors.

**Net Income** means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends, excluding, however:

- (1) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with:
  - (a) any sale of assets outside the ordinary course of business of such Person; or (b) the disposition of any securities by such Person, any of its Restricted Subsidiaries or any of its Designated Entities or the extinguishment of any Indebtedness of such Person, any of its Restricted Subsidiaries or any of its Designated Entities; and
- (2) any extraordinary gain or loss, together with any related provision for taxes on such extraordinary gain or loss.

**Net Equity Proceeds** means the net cash proceeds (including Cash Equivalents) received by the Parent after the Issue Date as a contribution to its common equity capital or from the issue or sale of Equity Interests (other than Disqualified Stock) of the Parent.

**Net Proceeds** means the aggregate cash proceeds, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not the interest component, thereof) received by the Parent or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of (1) the direct costs relating to such Asset Sale, including, without limitation, legal, accounting, investment banking and brokerage fees, and sales commissions, and any relocation expenses incurred as a result thereof, (2) taxes paid or payable as a result thereof, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, (3) amounts required to be applied to the repayment of Indebtedness or other liabilities secured by a Lien on the asset or assets that were the subject of such Asset Sale or required to be paid as a result of such sale, (4) any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP, (5) in the case of any Asset Sale by a Restricted Subsidiary of the Parent, payments to holders of Equity Interests in such Restricted Subsidiary in such capacity (other than such Equity Interests held by the Parent or any Restricted Subsidiary thereof) to the extent that such payment is required to permit the distribution of such proceeds in respect of the Equity Interests in such Restricted Subsidiary held by the Parent or any Restricted Subsidiary thereof and (6) appropriate amounts to be provided by the Parent or its Restricted Subsidiaries as a reserve against liabilities associated with such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as determined in accordance with GAAP; *provided* that (a) excess amounts set aside for payment of taxes pursuant to clause (2) above remaining after such taxes have been paid in full or the statute of limitations therefor has expired and

(b) amounts initially held in reserve pursuant to clause (6) no longer so held, will, in the case of each of subclause (a) and (b), at that time become Net Proceeds.

*Note Guarantee* means a Guarantee of the notes pursuant to the Indenture.

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***Obligations*** means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

***Officer*** means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

***Officers Certificate*** means a certificate signed on behalf of the Company or the Parent, as the case may be, by at least two Officers of the Company, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Company or the Parent as the case may be, that meets the requirements of the Indenture.

***Opinion of Counsel*** means an opinion from legal counsel who is reasonably acceptable to the Trustee (who may be counsel to or an employee of the Parent or the Company) that meets the requirements of the Indenture.

***Permitted Business*** means any business conducted or proposed to be conducted (as described in the prospectus) by the Parent and its Restricted Subsidiaries on the Issue Date, (including, without limitation, the delivery or distribution of wireless telecommunications services (including voice, data or video services) and the acquisition, holding or exploitation of any license relating to the delivery of such wireless telecommunications services) and other businesses related, ancillary or complementary thereto.

***Permitted Investments*** means:

- (1) any Investment in the Parent or a Restricted Subsidiary of the Parent;
- (2) any Investment in Cash Equivalents;
- (3) any Investment by the Parent or any Restricted Subsidiary of the Parent in a Person, if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary of the Parent; or
  - (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Parent or a Restricted Subsidiary of the Parent;

*provided* that such Person's primary business is a Permitted Business; and, in each case, any Investment by such Person, *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation, amalgamation or transfer;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with the covenant described above under the caption **Repurchase at the Option of Holders Asset Sales** or any other disposition of assets or property not constituting an Asset Sale as a result of clause (1) of the exceptions to the definition of **Asset Sale** ;

(5) Hedging Obligations that are Incurred for the purpose of fixing, hedging or swapping interest rate, commodity price or foreign currency exchange rate risk (or to reverse or amend any such agreements previously made for such purposes), and not for speculative purposes, and that do not increase the Indebtedness of the obligor outstanding at any time other than as a result of fluctuations in interest rates, commodity prices or foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;

(6) stock, obligations or securities received in satisfaction of judgments;

(7) advances to customers or suppliers in the ordinary course of business that are, in conformity with GAAP, recorded as accounts receivable, prepaid expenses or deposits on the balance sheet of the Parent or its Restricted Subsidiaries and endorsements for collection or deposit arising in the ordinary course of business;

(8) commission, payroll, travel and similar advances to officers and employees of the Parent or any of its Restricted Subsidiaries that are expected at the time of such advance ultimately to be recorded as an expense in conformity with GAAP;

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(9) loans and advances to employees, officers or directors of the Parent or any of its Restricted Subsidiaries made in the ordinary course of business, provided that such loans and advances do not exceed \$5 million at any one time outstanding;

(10) Investments in any Existing Designated Entity pursuant to agreements in existence on the Issue Date or to the extent permitted under that certain Amended and Restated Credit Agreement, dated as of June 16, 2006, by and among the Company, the Parent, Bank of America, N.A., as Administrative Agent, and the other lenders named therein, as in effect on October 23, 2006;

(11) Investments existing on the Issue Date;

(12) other Investments in any Person primarily engaged in a Permitted Business (provided that any such Person is not an Affiliate of the Parent or is an Affiliate of the Parent solely because: (i) the Parent, directly or indirectly, owns Equity Interests in, or controls, such Person or (ii) such Person is a Designated Entity) having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (12) since the Issue Date that are at that time outstanding, not to exceed 15% of total assets of the Parent (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value), determined as of the end of the most recent fiscal quarter of the Parent for which internal financial statements of the Parent are available, giving (x) pro forma effect to Asset Dispositions and Asset Acquisitions (including giving pro forma effect to the application of proceeds of any Asset Disposition) that occur during the period from the end of such fiscal quarter to the Transaction Date as if they had occurred and such proceeds had been applied on the last day of such fiscal quarter and (y) pro forma effect to asset dispositions and asset acquisitions (including giving pro forma effect to the application of proceeds of any asset disposition) that have been made by any Person that has become a Restricted Subsidiary or a Designated Entity or has been merged with or into the Parent, any Restricted Subsidiary or any Designated Entity during such period from the end of such fiscal quarter to the Transaction Date and that would have constituted Asset Dispositions or Asset Acquisitions had such transactions occurred when such Person was a Restricted Subsidiary or a Designated Entity, as the case may be, as if such asset dispositions or asset acquisitions were Asset Dispositions or Asset Acquisitions that occurred on the last day of such fiscal quarter);

(13) deposits or payments made with the FCC in connection with the auction or licensing of any permit, license, authorization, plan, directive, consent, permission, consent order or consent decree of or from any governmental authority; and

(14) Investments in any Person primarily engaged in a Permitted Business having an aggregate Fair Market Value, when taken together with all other Investments made pursuant to this clause (14) since the Issue Date that are at that time outstanding, not to exceed \$250 million (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value).

***Permitted Liens*** means:

(1) Liens on the assets of the Parent and any of its Restricted Subsidiaries securing Indebtedness in an aggregate amount not to exceed the greater of (x) \$1,750 million and (y) an amount equal to the Secured Debt Cap on the date on which such Lien is to be incurred;

(2) Liens in favor of the Parent or any Subsidiary Guarantor;

(3) Liens on property of a Person existing at the time such Person becomes a Restricted Subsidiary or is merged with or into or consolidated with the Parent or any Restricted Subsidiary of the Parent; *provided* that such Liens were in

existence prior to the contemplation of such merger or consolidation or other event resulting in such Person becoming a Restricted Subsidiary and do not extend to any assets other than those of the Person that becomes a Restricted Subsidiary or is merged into or consolidated with the Parent or the Restricted Subsidiary;

(4) Liens on property existing at the time of acquisition thereof by the Parent or any Restricted Subsidiary of the Parent, *provided* that such Liens were in existence prior to the contemplation of such acquisition and do not extend to any property other than the property so acquired by the Parent or the Restricted Subsidiary;

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(5) Liens securing the notes and the Note Guarantees;

(6) Liens existing on the Issue Date (other than any Liens securing the Company's 7.75% senior secured notes due 2016) and any renewals or extension thereof, *provided* that property or assets covered thereby is not expanded in connection with such renewal or extension;

(7) Liens securing Permitted Refinancing Indebtedness; *provided* that such Liens do not extend to any property or assets other than the property or assets that secure the Indebtedness being refinanced;

(8) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; *provided* that (a) the Incurrence of such Indebtedness was not prohibited by the Indenture and (b) such defeasance or satisfaction and discharge is not prohibited by the Indenture;

(9) Liens securing obligations that do not exceed at any one time outstanding the greater of \$50.0 million or 1.0% of the total assets of the Parent (determined as of the end of the most recent fiscal quarter of the Parent for which internal financial statements of the Parent are available) after giving pro forma effect to such incurrence and the application of any proceeds of any Indebtedness secured by such Liens;

(10) Liens to secure Indebtedness (including Capital Lease Obligations) permitted by clause (4) of the second paragraph of the covenant described under the caption Certain Covenants Incurrence of Indebtedness ; *provided* that any such Lien (a) covers only the assets acquired, constructed or improved with such Indebtedness and (b) is created within 270 days of such acquisition, construction or improvement;

(11) Liens incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other social security obligations;

(12) Liens, deposits (including deposits with the FCC) or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of Indebtedness), leases, or other similar obligations arising in the ordinary course of business;

(13) survey exceptions, encumbrances, easements or reservations of, or rights of other for, rights of way, zoning or other restrictions as to the use of properties, and defects in title which, in the case of any of the foregoing, were not incurred or created to secure the payment of Indebtedness, and which in the aggregate do no materially adversely affect the value of such properties or materially impair the use for the purposes of which such properties are held by the Parent or any of its Restricted Subsidiaries;

(14) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(15) Liens, deposits or pledges to secure public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds or obligations; and Liens, deposits or pledges in lieu of such bonds or obligations, or to secure such bonds or obligations, or to secure letters of credit in lieu of or supporting the payment of such bonds or obligations;

(16) Liens in favor of collecting or payor banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments of the Parent or any Subsidiary thereof on deposit with or in possession of such bank;



(17) any interest or title of a lessor, licensor or sublicensor in the property subject to any lease, license or sublicense (other than any property that is the subject of a Sale and Leaseback Transaction);

(18) Liens for taxes, assessments and governmental charges not yet delinquent or being contested in good faith and for which adequate reserves have been established to the extent required by GAAP;

(19) Liens arising from precautionary UCC financing statements regarding operating leases or consignments;

(20) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

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(21) Liens on cash collateral not in excess of \$50.0 million in the aggregate at any time securing letters of credit; and

(22) carriers, warehousemen, mechanics, landlords, materialmen, repairmen or other like Liens arising in the ordinary course of business in respect of obligations not overdue for a period in excess of 60 days or which are being contested in good faith by appropriate proceedings promptly instituted and diligently prosecuted; *provided, however*, that any reserve or other appropriate provision as will be required to conform with GAAP will have been made for that reserve or provision.

***Permitted Refinancing Indebtedness*** means any Indebtedness of the Parent or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund other Indebtedness of the Parent or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided that*:

(1) the amount of such Permitted Refinancing Indebtedness does not exceed the amount of the Indebtedness so extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued and unpaid interest thereon and the amount of any reasonably determined premium necessary to accomplish such refinancing and such reasonable expenses incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the notes or the Note Guarantees, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of the notes and is subordinated in right of payment to the notes or the Note Guarantees, as applicable, on terms at least as favorable, taken as a whole, to the Holders of notes as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(4) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is *pari passu* in right of payment with the notes or any Note Guarantees, such Permitted Refinancing Indebtedness is *pari passu* with, or subordinated in right of payment to, the notes or such Note Guarantees; and

(5) such Indebtedness is Incurred by either (a) the Restricted Subsidiary that is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded or (b) the Parent or the Company.

***Person*** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

***Preferred Stock*** means, with respect to any Person, any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions upon liquidation.

***Reference Period*** means, with respect to any specified Transaction Date, the period beginning on the first day of the Four Quarter Period and ending on such Transaction Date.

***Rating Agency*** means each of Moody's, S&P, Fitch and, if any of Moody's, S&P or Fitch ceases to exist or ceases to rate the notes for reasons outside of the control of the Company, any other nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Company as a replacement agency.

**Registration Rights Agreement** means (1) with respect to the notes issued on the Issue Date, the Registration Rights Agreement, to be dated the Issue Date, among the Company, the Initial Guarantors and the Initial Purchasers and (2) with respect to any additional notes, any registration rights agreement among the Company, the Guarantors and the other parties thereto relating to the registration by the Company and the Guarantors of such additional notes under the Securities Act.

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***Replacement Assets*** means (1) capital expenditures or other non-current assets that will be used or useful in a Permitted Business or (2) substantially all the assets of a Permitted Business or Voting Stock of any Person engaged in a Permitted Business that, when taken together with all other Voting Stock of such Person owned by the Company and its Restricted Subsidiaries, constitutes a majority of the Voting Stock of such Person and such Person will become on the date of acquisition thereof a Restricted Subsidiary.

***Restricted Investment*** means an Investment other than a Permitted Investment.

***Restricted Subsidiary*** of a Person means any Subsidiary of such Person that is not an Unrestricted Subsidiary.

***Restructuring Charges*** means all charges and expenses caused by or attributable to any restructuring, severance, relocation, consolidation and closing, integration, business optimization or transition, signing, retention or completion bonuses, or curtailments or modifications to pension and post-retirement employee benefit plans.

***S&P*** means Standard & Poor's, a division of The McGraw-Hill Companies, and its successors.

***Sale and Leaseback Transaction*** means, with respect to any Person, any transaction involving any of the assets or properties of such Person, whether now owned or hereafter acquired, whereby such Person sells or otherwise transfers such assets or properties and then or thereafter leases such assets or properties or any part thereof or any other assets or properties which such Person intends to use for substantially the same purpose or purposes as the assets or properties sold or transferred.

***Secured Debt Cap*** means, on any Transaction Date, an amount equal to the aggregate amount of the Consolidated Cash Flow of the Parent, its Restricted Subsidiaries and its Designated Entities for the Four Quarter Period times 3.5. For purposes of making the computation referred to above, (1) pro forma effect shall be given to Asset Dispositions and Asset Acquisitions (including giving pro forma effect to the application of proceeds of any Asset Disposition) that occur during the Reference Period as if they had occurred and such proceeds had been applied on the first day of such Reference Period and (2) pro forma effect shall be given to asset dispositions and asset acquisitions (including giving pro forma effect to the application of proceeds of any asset disposition) that have been made by any Person that has become a Restricted Subsidiary or a Designated Entity or has been merged with or into the Parent, any Restricted Subsidiary or any Designated Entity during such Reference Period and that would have constituted Asset Dispositions or Asset Acquisitions had such transactions occurred when such Person was a Restricted Subsidiary or a Designated Entity, as the case may be, as if such asset dispositions or asset acquisitions were Asset Dispositions or Asset Acquisitions that occurred on the first day of such Reference Period. To the extent that pro forma effect is given to an Asset Acquisition or Asset Disposition, such pro forma calculation shall be based upon the four full fiscal quarters immediately preceding the Transaction Date of the Person, or division, operating unit or line of business of the Person, that is acquired or disposed of for which financial information is available, and Consolidated Cash Flow will be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, but without giving effect to clause (3) of the proviso set forth in the definition of Consolidated Net Income.

***Significant Subsidiary*** means any Subsidiary that would constitute a significant subsidiary within the meaning of Article 1 of Regulation S-X of the Securities Act.

***Stated Maturity*** means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which such payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

***Subsidiary*** means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of the Voting Stock is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

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(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof);

*provided, however*, that for avoidance of doubt, a Designated Entity shall not be deemed to be a Subsidiary of the Parent, the Company or any of its Restricted Subsidiaries so long as the Parent and its Restricted Subsidiaries do not own Voting Stock having the power (without regard to the occurrence of any contingency) to elect more than 50% of the directors, managers or trustees of such Designated Entity or become the sole general partner or the managing general partner of such Designated Entity.

***Subsidiary Guarantor*** means any Restricted Subsidiary of the Parent that guarantees the Company's Obligations under the notes in accordance with the terms of the Indenture, and its successors and assigns, until released from its obligations under such Guarantee and the Indenture in accordance with the terms of the Indenture.

***Transaction Date*** means, with respect to the incurrence of any Indebtedness by the Parent or any of its Restricted Subsidiaries, the date such Indebtedness is to be incurred, with respect to any Restricted Payment, the date such Restricted Payment is to be made, with respect to the making of any Investment, the date such Investment is to be made, and with respect to the incurrence of any Lien by the Parent or any of its Restricted Subsidiaries, the date such Lien is to be incurred.

***Treasury Rate*** means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days prior to the date fixed for prepayment (or, if such Statistical Release is no longer published, any publicly available source for similar market data)) most nearly equal to the then remaining term of the notes to October 15, 2015; *provided, however*, that if the then remaining term of the notes to October 15, 2015 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate will be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the then remaining term of the notes to October 15, 2015 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

***Unrestricted Subsidiary*** means any Subsidiary of the Parent (other than the Company) that is designated by the Board of Directors of the Parent as an Unrestricted Subsidiary pursuant to a Board Resolution in compliance with the covenant described under the caption Certain Covenants Designation of Restricted and Unrestricted Subsidiaries, and any Subsidiary of such Subsidiary.

***Voting Stock*** of any Person as of any date means the Capital Stock of such Person that is ordinarily entitled to vote in the election of the Board of Directors of such Person.

***Weighted Average Life to Maturity*** means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

***wholly owned*** means, with respect to any Subsidiary of any Person, the ownership of all of the outstanding Capital Stock of such Subsidiary (other than any director's qualifying shares and shares issued to foreign nationals to the extent required by applicable law) by such Person or one or more wholly owned Subsidiaries of such Person.

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**DESCRIPTION OF OLD NOTES**

The terms of the old notes are identical in all material respects to those of the new notes, except that (1) the old notes have not been registered under the Securities Act, are subject to certain restrictions on transfer and are entitled to certain rights under the registration rights agreement (which rights will terminate upon consummation of the exchange offer, except under limited circumstances); and (2) the new notes will not provide for any additional interest as a result of our failure to fulfill certain registration obligations. The old notes provide that, in the event that the registration statement in which this prospectus is included is not declared effective by the SEC on or before August 16, 2011, or the exchange offer is not consummated within 30 business days after the effectiveness of such registration statement, or, in certain limited circumstances, in the event that a shelf registration statement with respect to the resale of the old notes is not filed within 30 days from the date on which the obligation to file such shelf registration statement arises or is not declared effective within 75 days after such filing (or by August 16, 2011, if later), then we will pay additional interest to each holder of old notes, with respect to the first 90-day period immediately following the occurrence of such event in an amount equal to one-half of one percent (0.50%) per annum (in addition to the interest rate on the old notes) on the principal amount of old notes held by such holder. In addition, the amount of the additional interest will increase by an additional one-half of one percent (0.50%) per annum on the principal amount of old notes with respect to each subsequent 90-day period until such failure has been cured, up to a maximum amount of additional interest of 1.5% per annum. The new notes are not, and upon consummation of the exchange offer with respect to the old notes will not be, entitled to any such additional interest. Accordingly, holders of old notes should review the information set forth under Risk Factors and Description of New Notes.

**CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion is a summary of certain U.S. federal income tax considerations relevant to the exchange of the old notes for the new notes pursuant to the exchange offer and the ownership and disposition of the new notes, but does not purport to be a complete analysis of all potential tax effects. As used in this discussion, the term notes means the old notes and the new notes. The discussion is based upon the Internal Revenue Code of 1986, as amended (the Code), U.S. Treasury Regulations issued thereunder (the Treasury Regulations), Internal Revenue Service (IRS) rulings and pronouncements, and judicial decisions now in effect, all of which are subject to change at any time. Any such change may be applied retroactively in a manner that could adversely affect a holder of the notes. This discussion does not address all of the U.S. federal income tax consequences that may be relevant to a holder in light of such holder's particular circumstances or to holders subject to special rules, such as: banks and other financial institutions; broker-dealers; insurance companies; tax-exempt organizations; dealers in securities; regulated investment companies; real estate investment trusts; S corporations, partnerships and other pass-through entities; traders in securities who elect to apply a mark-to-market method of accounting; persons that hold notes as part of a straddle, a conversion transaction or other integrated transactions; persons who acquire notes in connection with employment or other performance of services; U.S. Holders (as defined below) whose functional currency is not the U.S. dollar; persons subject to the alternative minimum tax; and persons who have ceased to be U.S. citizens or to be taxed as U.S. resident aliens. In addition, this discussion is limited to persons who hold the notes as capital assets (generally, property held for investment) within the meaning of Section 1221 of the Code. Moreover, the effect of any applicable state, local, foreign or other tax laws, including gift and estate tax laws, is not discussed.

As used herein, U.S. Holder means a beneficial owner of the notes who, for U.S. federal income tax purposes, is:

an individual citizen or resident of the United States;



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a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia;

an estate, the income of which is subject to U.S. federal income tax regardless of its source; or

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a trust (1) whose administration is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust, or (2) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) holds notes, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding the notes, you should consult your tax advisor regarding the tax consequences of the ownership and disposition of the notes.

We have not sought and will not seek any rulings from the IRS with respect to the matters discussed below. There can be no assurance that the IRS will not take a different position concerning the tax consequences of the exchange of old notes for new notes or of the ownership or disposition of the new notes or that any such position would not be sustained.

**THIS DISCUSSION IS FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. HOLDERS OF NOTES SHOULD CONSULT THEIR TAX ADVISORS WITH REGARD TO THE APPLICATION OF THE TAX CONSEQUENCES DISCUSSED BELOW TO THEIR PARTICULAR SITUATIONS AS WELL AS POTENTIAL CHANGES IN APPLICABLE TAX LAWS AND THE APPLICATION OF ANY STATE, LOCAL, FOREIGN OR OTHER TAX LAWS, INCLUDING GIFT AND ESTATE TAX LAWS, AND ANY TAX TREATIES.**

### **Exchange Pursuant to the Exchange Offer**

The exchange of the old notes for the new notes in the exchange offer will not be treated as an exchange for U.S. federal income tax purposes because the new notes will not be considered to differ materially in kind or extent from the old notes. Accordingly, the exchange of the old notes for the new notes will not be a taxable event to holders for U.S. federal income tax purposes. Moreover, the new notes will have the same tax attributes as the old notes exchanged therefor and the same tax consequences to holders as the old notes have to holders, including without limitation, the same adjusted tax basis and holding period.

### **U.S. Holders**

#### ***Interest***

A U.S. Holder generally will be required to recognize and include in gross income any stated interest as ordinary income at the time it is received or accrued on the notes in accordance with such holder's method of accounting for U.S. federal income tax purposes.

#### ***Market Discount***

If a U.S. Holder acquires a note at a cost that is less than its stated redemption price at maturity (*i.e.*, its stated principal amount), the amount of such difference is treated as market discount for U.S. federal income tax purposes, unless such difference is less than 0.0025 multiplied by the stated redemption price at maturity multiplied by the number of complete years to maturity (from the date of acquisition). Under the market discount rules of the Code, a U.S. Holder is required to treat any partial payment of principal on a note, and any gain on the sale, exchange, retirement or other disposition of a note, as ordinary income to the extent of the accrued market discount that has not previously been included in income. If a U.S. Holder disposes of such note in certain otherwise nontaxable transactions, the holder must include accrued market discount as ordinary income as if the holder had sold the note at

its then fair market value.

In general, the amount of market discount that has accrued is determined on a ratable basis. A U.S. Holder may, however, elect to determine the amount of accrued market discount on a constant yield to maturity basis. This election is made on a note-by-note basis and is generally irrevocable.

With respect to notes with market discount, a U.S. Holder may not be allowed to deduct immediately a portion of the interest expense on any indebtedness incurred or continued to purchase or to carry the notes. A U.S. Holder may elect to include market discount in income currently as it accrues, in which case the interest deferral rule set

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forth in the preceding sentence will not apply. This election will apply to all debt instruments acquired by the U.S. Holder on or after the first day of the first taxable year to which the election applies and is irrevocable without the consent of the IRS. A U.S. Holder's tax basis in a note will be increased by the amount of market discount included in the holder's income under the election.

***Amortizable Bond Premium***

If a U.S. Holder purchases a note for an amount in excess of the stated redemption price at maturity, the holder will be considered to have purchased the note with amortizable bond premium in an amount equal to the excess. Generally, a U.S. Holder may elect to amortize the premium as an offset to interest, using a constant yield method similar to that described above, over the remaining term of the note. The notes are subject to call provisions at our option at various times, as described under Description of New Notes Optional Redemption. If it results in a smaller amortizable bond premium, a U.S. Holder would amortize such premium to an earlier call date, with reference to the amount payable on such earlier call date, rather than to the note's stated redemption price at maturity. However, in the event the note is not redeemed at the earlier call date, the note would be treated as reissued on the call date for the call price, and the note would again be subject to the rules regarding amortization of bond premium (taking into account any additional call periods). Under applicable Treasury Regulations, the amount of amortizable bond premium that a U.S. Holder may deduct in any accrual period is limited to the amount by which the holder's total interest inclusions on the note in prior accrual periods exceed the total amount the holder treated as a bond premium deduction in prior accrual periods. If any of the excess bond premium is not deductible, that amount is carried forward to the next accrual period. If a U.S. Holder elects to amortize bond premium, the holder must reduce its tax basis in the note by the amount of the premium used to offset interest income as set forth above. An election to amortize bond premium applies to all taxable debt obligations then owned and thereafter acquired by the U.S. Holder and may be revoked only with the consent of the IRS.

***Election of Constant Yield Method***

A U.S. Holder may elect to include in gross income all interest that accrues on a note, including any stated interest, market discount, *de minimis* market discount and unstated interest, as adjusted by amortizable bond premium, by using a constant yield prescribed in the Code and applicable Treasury Regulations. This election for a note with amortizable bond premium will result in a deemed election to amortize bond premium for all taxable debt obligations held or subsequently acquired by the U.S. Holder on or after the first day of the first taxable year to which the election applies and may be revoked only with the consent of the IRS. Similarly, this election for a note with market discount will result in a deemed election to accrue market discount in income currently for the note and for all other debt instruments acquired by the U.S. Holder with market discount on or after the first day of the taxable year to which the election first applies, and may be revoked only with the consent of the IRS. The U.S. Holder's tax basis in the note will be increased by each accrual of income, and decreased by any payment on the note (including a payment of stated interest), under the constant yield election described in this paragraph.

***Payments in Excess of Stated Interest and Principal***

In certain circumstances (see Description of New Notes Optional Redemption and Description of New Notes Repurchase at the Option of Holders Change of Control), we may be obligated to make payments in excess of stated interest and the principal amount of the notes. We intend to take the position that the notes should not be treated as contingent payment debt instruments because of these additional payments. This position is based in part on assumptions regarding the likelihood, as of the date of issuance of the notes, that such additional amounts will have to be paid. Assuming such position is respected, any additional payments made to a U.S. Holder pursuant to such redemption or repurchase would be taxable as described below in U.S. Holders Sale or Other Taxable Disposition of the Notes. Our determination regarding these additional payments is binding on a U.S. Holder unless such holder

discloses its contrary position in the manner required by applicable Treasury Regulations. If the IRS successfully challenged this position, and the notes were treated as contingent payment debt instruments, U.S. Holders could be required to accrue interest income at a rate higher than the stated interest rate on the note and to treat as ordinary income, rather than capital gain, any gain recognized on a sale, exchange or redemption of a note. U.S. Holders are urged to consult their tax advisors regarding the potential application to the

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notes of the contingent payment debt instrument rules and the consequences thereof. The remaining discussion assumes that the notes will not be treated as contingent payment debt instruments.

### ***Sale or Other Taxable Disposition of the Notes***

A U.S. Holder will recognize gain or loss on the sale, exchange, redemption (including a partial redemption), retirement or other taxable disposition of a note equal to the difference between the sum of the cash and the fair market value of any property received in exchange therefor (less a portion allocable to any accrued and unpaid stated interest, which generally will be taxable as ordinary income if not previously included in such holder's income) and the U.S. Holder's adjusted tax basis in the note. A U.S. Holder's adjusted basis in a note (or a portion thereof) generally will be the U.S. Holder's cost therefor increased by any market discount previously included in income with respect to the note and decreased by the amount of any amortizable bond premium previously taken into account with respect to the note and any payment on the note other than a payment of qualified stated interest. Other than as described above under U.S. Holder Market Discount, this gain or loss generally will be a capital gain or loss. In the case of a non-corporate U.S. Holder, including an individual, if the note has been held for more than one year, such capital gain will be subject to tax at preferential rates. The deductibility of capital losses is subject to limitation.

### ***Information Reporting and Backup Withholding***

A U.S. Holder may be subject to information reporting and backup withholding when such holder receives interest and principal payments on the notes or proceeds upon the sale or other disposition of such notes (including a redemption or retirement of the notes). Certain holders are generally not subject to information reporting or backup withholding. A U.S. Holder will be subject to backup withholding if such holder is not otherwise exempt and such holder:

fails to furnish its taxpayer identification number, or TIN, which, for an individual is ordinarily his or her social security number;

furnishes an incorrect TIN;

in the case of interest payments, is notified by the IRS of a failure to properly report payments of interest or dividends; or

in the case of interest payments, fails to certify, under penalties of perjury, that such U.S. Holder has furnished a correct TIN and that the IRS has not notified the U.S. Holder that it is subject to backup withholding.

A U.S. Holder should consult its tax advisor regarding its qualification for an exemption from backup withholding and the procedures for obtaining such an exemption, if applicable. Backup withholding is not an additional tax, and a taxpayer may use amounts withheld as a credit against its U.S. federal income tax liability or may claim a refund if it timely provides certain information to the IRS.

### **Non-U.S. Holders**

A non-U.S. Holder is a beneficial owner of the notes who is not a U.S. Holder or a partnership or other entity treated as a partnership for U.S. federal income tax purposes. Special rules (not discussed below) may apply to certain non-U.S. Holders, including controlled foreign corporations, passive foreign investment companies, certain U.S. expatriates, and foreign persons eligible for benefits under an applicable income tax treaty with the United States. Such non-U.S. Holders should consult their tax advisors to determine the United States federal, state, local and other tax consequences that may be relevant to them.



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***Interest***

Interest paid to a non-U.S. Holder on its notes that is not effectively connected with the non-U.S. Holder's conduct of a U.S. trade or business generally will not be subject to U.S. federal withholding tax of 30% (or, if applicable, a lower treaty rate) provided that:

such holder does not directly or indirectly, actually or constructively, own 10% or more of the total combined voting power of all classes of our voting stock;

such holder is not a controlled foreign corporation that is related to us through actual or constructive stock ownership;

such holder is not a bank that received such interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; and

(1) the non-U.S. Holder certifies in a statement provided to us or our paying agent, under penalties of perjury, that it is not a United States person within the meaning of the Code and provides its name and address, (2) a securities clearing organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business and holds the notes on behalf of the non-U.S. Holder certifies to us or our paying agent under penalties of perjury that it, or the financial institution between it and the non-U.S. Holder, has received from the non-U.S. Holder a statement, under penalties of perjury, that such holder is not a United States person and provides us or our paying agent with a copy of such statement or (3) the non-U.S. Holder holds its notes directly through a qualified intermediary and certain conditions are satisfied.

A non-U.S. Holder generally will also be exempt from withholding tax on interest if such amount is effectively connected with such holder's conduct of a U.S. trade or business and, if an income tax treaty applies, is attributable to a U.S. permanent establishment (as discussed below under *Non-U.S. Holders' U.S. Trade or Business*) and the holder provides us or our paying agent with a properly executed IRS Form W-8ECI (or applicable successor form).

If a non-U.S. Holder does not satisfy the requirements above, interest paid to such non-U.S. Holder will generally be subject to a 30% U.S. federal withholding tax. Such rate may be reduced or eliminated under a tax treaty between the United States and the non-U.S. Holder's country of residence. To claim a reduction or exemption under a tax treaty, a non-U.S. Holder must generally complete an IRS Form W-8BEN (or applicable successor form) and claim the reduction or exemption on the form.

As discussed above under *U.S. Holders' Payments in Excess of Stated Interest and Principal*, upon the occurrence of certain enumerated events, we may be required to make certain payments with respect to the notes. Such payments may be treated as interest, subject to the rules described under *Non-U.S. Holders' Interest* and

*Non-U.S. Holders' U.S. Trade or Business*, or as additional amounts paid for the notes, subject to the rules described under *Non-U.S. Holders' Sale or Other Taxable Disposition of the Notes* or *Non-U.S. Holders' U.S. Trade or Business*, as applicable, or as other income subject to U.S. federal withholding tax. A non-U.S. Holder that is subject to U.S. federal withholding tax should consult its tax advisors as to whether it can obtain a refund for all or a portion of any amounts withheld.

***Sale or Other Taxable Disposition of the Notes***

A non-U.S. Holder will generally not be subject to U.S. federal income tax or withholding tax on gain recognized on the sale, exchange, redemption, retirement or other disposition of a note (except with respect to any proceeds allocable



to accrued and unpaid interest, which generally will be taxable as interest and may be subject to the rules described above in Non-U.S. Holders Interest ) so long as (i) the gain is not effectively connected with the conduct by the non-U.S. Holder of a trade or business within the U.S. (and, if a tax treaty applies, the gain is not attributable to a U.S. permanent establishment maintained by such non-U.S. Holder) or (ii) in the case of a non-U.S. Holder who is an individual, such non-U.S. Holder is not present in the United States for 183 days or more in the taxable year of disposition and certain other requirements are met. A non-U.S. Holder who is an individual

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and does not meet this exemption should consult his or her tax advisor regarding the potential liability for U.S. federal income tax on such holder's gain realized on a note.

***U.S. Trade or Business***

If interest paid on a note or gain from a disposition of a note is effectively connected with a non-U.S. Holder's conduct of a U.S. trade or business, and, if an income tax treaty applies, the non-U.S. Holder maintains a U.S. permanent establishment to which such amounts are generally attributable, the non-U.S. Holder may be subject to U.S. federal income tax on the interest or gain on a net basis generally in the same manner as if it were a U.S. Holder. If interest income received with respect to the notes is taxable on a net basis, the 30% withholding tax described above will not apply (assuming an appropriate certification is provided, generally on IRS Form W-8ECI). A non-U.S. Holder that is a foreign corporation may also be subject to a branch profits tax equal to 30% of its effectively connected earnings and profits for the taxable year, subject to certain adjustments, unless it qualifies for a lower rate under an applicable income tax treaty.

***Information Reporting and Backup Withholding***

Backup withholding generally will not apply to payments of principal or interest made by us or our paying agents, in their capacities as such, to a non-U.S. Holder of a note if the holder is exempt from withholding tax on interest as described above. However, information reporting may still apply with respect to payments of interest. Payments of the proceeds from a disposition by a non-U.S. Holder of a note made to or through a foreign office of a broker will not be subject to information reporting or backup withholding, except that the information reporting (but generally not backup withholding) may apply to those payments, if the broker is:

a United States person;

a controlled foreign corporation for U.S. federal income tax purposes;

a foreign person 50% or more of whose gross income is effectively connected with a U.S. trade or business for a specified three-year period; or

a foreign partnership, if at any time during its tax year, one or more of its partners are United States persons, as defined in the Regulations, who in the aggregate hold more than 50% of the income or capital interest in the partnership or if, at any time during its tax year, the foreign partnership is engaged in a U.S. trade or business.

Payment of the proceeds from a disposition by a non-U.S. Holder of a note made to or through the U.S. office of a broker is generally subject to information reporting and backup withholding unless the holder or beneficial owner certifies as to its TIN or otherwise establishes an exemption from information reporting and backup withholding.

A non-U.S. Holder should consult its tax advisor regarding application of withholding, information reporting and backup withholding in its particular circumstances and the availability of and procedure for obtaining an exemption from withholding, information reporting and backup withholding under current Treasury Regulations. In this regard, the current Treasury Regulations provide that a certification may not be relied on if we or our agent (or other party) knows or has reason to know that the certification may be false. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. Holder will be allowed as a credit against the holder's U.S. federal income tax liability or may be refunded, provided the required information is furnished in a timely manner to the IRS.

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**PLAN OF DISTRIBUTION**

Each broker-dealer that receives new notes for its own account in connection with the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such new notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of new notes received in exchange for old notes where such notes were acquired as a result of market-making activities or other trading activities. We have agreed that, beginning on the date of consummation of the exchange offer and ending on the close of business one year after the consummation of the exchange offer, we will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, all dealers effecting transactions in the new notes may be required to deliver a prospectus during the time periods prescribed by applicable securities laws.

We will not receive any proceeds from the issuance of new notes in the exchange offer or from any sale of new notes by broker-dealers. New notes received by broker-dealers for their own accounts pursuant to the exchange offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the new notes or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or at negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer and/or the purchasers of any such new notes. Any broker-dealer that resells new notes that were received by it for its own account pursuant to the exchange offer and any broker or dealer that participates in a distribution of such new notes may be deemed to be an underwriter within the meaning of the Securities Act, and any profit on any such resale of new notes and any commissions or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act.

For a period of one year after the consummation of the exchange offer, we will promptly send a reasonable number of additional copies of the prospectus and any amendment or supplement to this prospectus to any broker-dealer that requests such documents in the letter of transmittal. We have agreed to pay all expenses incident to the exchange offer (including the expenses of one counsel for the holder of the notes) other than commissions or concessions of any brokers or dealers and will indemnify the holders of the new notes, including any broker-dealers, against certain liabilities, including liabilities under the Securities Act.

**LEGAL MATTERS**

The validity of the new notes and guarantees offered hereby has been passed upon for us by Latham & Watkins LLP, San Diego, California.

**EXPERTS**

The consolidated financial statements of Leap and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this prospectus by reference to the Annual Report on Form 10-K of Leap for the year ended December 31, 2009 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

**LIMITATION ON LIABILITY AND DISCLOSURE OF COMMISSION POSITION ON  
INDEMNIFICATION FOR SECURITIES ACT LIABILITIES**

Our certificate of incorporation and bylaws provide that we will indemnify our directors and officers, and may indemnify our employees and other agents, to the fullest extent permitted by the Delaware General Corporation Law. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

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**LEAP WIRELESS INTERNATIONAL, INC**

**CRICKET COMMUNICATIONS, INC.**