

Court No. \_\_\_\_\_  
Estate No. \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE APPOINTMENT OF AN  
INTERIM RECEIVER UNDER SECTION 47 OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3

BETWEEN:

**SASKATCHEWAN TELECOMMUNICATIONS,**

APPLICANT

- and -

**WIRELESS AGE COMMUNICATIONS LTD.  
and  
WIRELESS SOURCE DISTRIBUTION LTD.,**

RESPONDENTS

**AFFIDAVIT OF MICHAEL ANDERSON**

I, MICHAEL ANDERSON, of the City of Regina, Saskatchewan, Chief Financial Officer, MAKE OATH AND SAY AS FOLLOWS, THAT:

1. I am the Chief Financial Officer of the Applicant, Saskatchewan Telecommunications ("SaskTel"), and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be on information and belief and where so stated, I believe the same to be true.

**The Parties**

2. SaskTel is a Saskatchewan Crown Corporation with its head office in Regina, Saskatchewan.

3. The Respondent, Wireless Age Communications Ltd. ("Wireless Age") is a subsidiary of Wireless Age Communications, Inc. ("WACI"). WACI is a publicly traded company listed on the Over the Counter Bulletin Board. The majority shareholder of WACI is a publicly traded

company, Newlook Industries Corp. ("Newlook"). Newlook is listed on the TSX Venture Exchange.

4. The Respondent, Wireless Source Distribution Ltd. ("Wireless Source") is a wholly owned subsidiary of WACI.

5. Wireless Age is in the business of operating retail cellular and telecommunications outlets in western Canada.

6. Wireless Age carries on its business at the following locations:

- (a) 1408 Broad Street, Regina, Saskatchewan;
- (b) 2223 Victoria Avenue East, Regina, Saskatchewan;
- (c) 1401 Broad Street, Regina, Saskatchewan;
- (d) 4131 Rochdale Blvd, Regina, Saskatchewan;
- (e) 2325 Preston Avenue, Saskatoon, Saskatchewan;
- (f) 300 Circle Drive, Saskatoon, Saskatchewan;
- (g) 105-3393 Portage Avenue, Winnipeg, Manitoba;
- (h) 76-393 St. Mary Avenue, Winnipeg, Manitoba; and
- (i) 203-2305 McPhillips Street, Winnipeg, Manitoba.

7. Wireless Source distributes two way radio products and wireless accessories in Canada.

8. Together, Wireless Age and Wireless Source employ approximately 99 full time and part time employees. Of these, 8 are employed by Wireless Source and 38 of the Wireless Age employees work in the Manitoba locations.

### **The Indebtedness**

9. Wireless Age and Wireless Source are indebted to SaskTel in the amount of \$5,866,070.58 as of December 31, 2008 (the "Indebtedness"). The Indebtedness accrued, in part, as a result of a contractual relationship between Wireless Source and SaskTel pursuant to a Prepaid Cellular Service Card Distribution Agreement dated July 31, 2002 (the "Prepaid Card Agreement"). Attached hereto as Exhibit "A" to this affidavit is a true copy of the Prepaid Card Agreement.

10. Wireless Age is a dealer for SaskTel pursuant to a Master Distributorship Agreement dated March 31, 2003 (the "Distributorship Agreement"). The Distributorship Agreement designates Wireless Age as a non-exclusive distributor of SaskTel's communication products and services in exchange for certain commissions. As the terms of the Distributorship Agreement are commercially sensitive, a copy has not been attached to this affidavit. However, it can be made available to the Court upon request and provided certain terms remain confidential.

### **The Repayment Agreement and Assignment of Security**

11. Wireless Source defaulted in its obligations pursuant to the Prepaid Card Agreement such that it was terminated by SaskTel effective September 30, 2008.

12. Subsequent to the termination of the Prepaid Card Agreement, SaskTel, Wireless Age and Wireless Source entered into an agreement in writing dated October 23, 2008 (the "Repayment Agreement") whereby, inter alia, Wireless Age and Wireless Source agreed to repay the Indebtedness by instalments over a period of approximately 12 months.

13. Attached hereto and marked as Exhibit "B" to this affidavit is a true copy of the Repayment Agreement.

14. Pursuant to an express term of the Repayment Agreement, Wireless Age executed a guarantee of the Indebtedness dated October 23, 2008 (the "Guarantee"). Attached hereto and marked as Exhibit "C" to this affidavit is a true copy of the Guarantee.

15. In accordance with the terms of the Repayment Agreement, Wireless Age and Wireless Source were to provide SaskTel with a first charge security interest in all of their present and after-acquired personal property. This security interest was provided to SaskTel by way of an assignment of the security interest (the "Security Interest") of TCE Capital Corporation ("TCE") pursuant to an assignment agreement dated on or about November 25, 2008 (the "Assignment Agreement").

16. Attached hereto and marked as Exhibit "D" to this affidavit is a true copy of the Assignment Agreement.

17. The assignment of the Security Agreement was acknowledged by Wireless Age and Wireless Source pursuant to an agreement in writing dated November 25, 2008 (the "Acknowledgement Agreement").

18. Attached hereto and marked as Exhibit "E" to this affidavit is a true copy of the Acknowledgement Agreement.

19. The Security Interest is evidenced by the following documents:

(a) a General Security Agreement dated on or about January 9, 2006, whereby Wireless Age granted a security interest in all of its present and after-acquired property to TCE (the "Wireless Age GSA");

(b) a General Security Agreement dated on or about January 9, 2006, whereby Wireless Source granted a security interest in all of its present and after-acquired property to TCE (the "Wireless Source GSA");

(c) a General Assignment of Accounts dated on or about January 9, 2006, whereby Wireless Age assigned all of its present and after-acquired accounts, debts and receivables to TCE (the "Wireless Age Assignment of Accounts");

(d) a General Assignment of Accounts dated on or about January 9, 2006, whereby Wireless Source assigned all of its present and after-acquired accounts, debts and receivables to TCE (the "Wireless Source Assignment of Accounts");

(e) a Guarantee dated on or about January 9, 2006, whereby Wireless Age guaranteed all indebtedness owing from time to time by Wireless Source (the "Wireless Age Guarantee"); and

(f) a Guarantee dated on or about January 9, 2006, whereby Wireless Source guaranteed all indebtedness owing from time to time by Wireless Age (the "Wireless Source Guarantee").

20. Attached hereto respectively as Exhibits "F", "G", "H", "I", "J" and "K" are the Wireless Age GSA, the Wireless Source GSA, the Wireless Age Assignment of Accounts, the Wireless Source Assignment of Accounts, the Wireless Age Guarantee and the Wireless Source Guarantee.

21. Exhibits "F" to "K" hereof are collectively referred to as the "Security Documents".

#### **Financial Difficulties for Wireless Age and Wireless Source**

22. Wireless Age has ceased to meet its liabilities generally as they become due. In particular, Wireless Age has been unable to pay its primary supplier of wireless telephones and accessories, Bell Distribution Inc. ("BDI") on a timely basis. I have been advised by a representative of BDI that as of December 31, 2008, BDI is owed approximately \$2,000,000.00 by Wireless Age. This represents indebtedness being outstanding in excess of 90 days when ordinary terms would require payment within 30 days.

23. As a result of Wireless Age being in default of its terms of payment, BDI has refused to supply Wireless Age with any product unless paid for on a cash basis. This has meant that Wireless Age has been unable to acquire sufficient inventory to properly stock its retail locations.

24. As Wireless Age is a dealer pursuant to the Distributorship Agreement, SaskTel has an interest in ensuring Wireless Age pays its suppliers on a timely basis and continues to obtain adequate inventory for use in its business operations.

25. SaskTel has also been contacted by Harvard Broadcasting ("Harvard") who has advised that Wireless Age was in excess of 150 days in arrears on its account for advertising services

purchased for air on Harvard's radio stations. Harvard requested that SaskTel pay the outstanding account of Wireless Age but SaskTel did not agree to make such payment.

26. On or about December 4, 2008, Shelley Kitzul, an employee of SaskTel visited the two Wireless Age locations in Saskatoon and reported as follows, based on her personal observations and discussions that she had with employees of Wireless Age:

- (a) business at the Market Mall location was very slow;
- (b) the Market Mall location was out of certain models of cell phone including the Sanyo 7050, Samsung U740 and LG 385;
- (c) the Circle Drive location had very little stock, being out of the Samsung Instinct, M530, LG385 or virtually any other type of phone that is in high demand.

In addition, Shelley Kitzul confirmed that the other SaskTel dealers located in Saskatoon are well stocked with inventory and a variety of phones indicating that it is not a general shortage of inventory due to manufacturer delays but rather a problem specific to Wireless Age.

27. On or about December 4, 2008, Lisa Trembley, an employee of SaskTel, visited the three Regina locations of Wireless Age and reported as follows, based on her personal observations and discussions that she had with employees of Wireless Age:

- (a) the Regina locations were very short of inventory and had been for the last few weeks;
- (b) sales had been very slow;
- (c) the Regina locations did not have certain wireless phone models including the Blackberry Curve, m530, m300 and w315.

28. On or about January 8, 2009, Ian Schofield of MNP advised me that he had been informed by Wireless Age staff that Wireless Age needed the following urgent product from BDI and another supplier, Tessco, to satisfy orders from existing customers that cannot be filled because of the lack of inventory

- (a) 400 Blackberrys - \$200,000;

- (b) 500 Airlink Modems - \$270,000;
- (c) Tessco inventory - \$25,000;
- (d) Regular inventory for the stores - \$150,000.

29. Ian Schofield has advised me that the total inventory value that is urgently needed for immediate sale to customers is \$645,000.00. My review of the financial condition of Wireless Age confirms that it is not in a position to make these inventory purchases.

30. Based on the information I have received from BDI, from the store visits by Shelley Kitkul and Lisa Trembley and from Ian Schofield of MNP, it is apparent that Wireless Age is unable to meet its liabilities generally as they become due and this has had a significant negative impact on their business operations.

31. **Improper Payment of Monies**

32. In accordance with the express provisions of the Repayment Agreement, Wireless Age and Wireless Source were to provide SaskTel with certain financial information including their financial statements and monthly bank statements.

33. The financial statements provided to SaskTel indicate that both Wireless Age and Wireless Source were profitable for the year ended December 31, 2007. Attached hereto and marked as Exhibit "L" are true copies of the said financial statements.

34. Notwithstanding this profitability, Wireless Age and Wireless Source are unable to meet their liabilities generally as they become due.

35. Attached hereto and marked as Exhibits "M" and "N", respectively, are true copies of the bank statements for each of Wireless Age and Wireless Source for the month ended October 31, 2008.

36. Attached hereto and marked as Exhibit "O" are true copies of the interim financial statements of Wireless Age and Wireless Source for the period ending November 30, 2008.

37. I have conducted an analysis of the financial information provided by Wireless Age and Wireless Source and it is apparent that the companies have been paying cash to one or more of their parent companies. Specifically, the bank statements indicate that not less than \$500,000 was taken out of Wireless Age and/or Wireless Source in October of 2008 and paid to a parent, either WACI or Newlook.

38. SaskTel believes on reasonable grounds that Wireless Age and Wireless Source have similarly been paying money to WACI or Newlook for many months such that several million dollars has been transferred out of Wireless Age and Wireless Source. This has jeopardized the business operations of Wireless Age and Wireless Source and has or will impair the ability of SaskTel to recover the Indebtedness.

39. **Appointment of Meyers Norris Penny Limited**

40. By letter dated December 8, 2008, SaskTel demanded that Wireless Age and Wireless Source consent to the appointment of Meyers Norris Penny Limited (“MNP”) for the purpose of conducting a review and analysis of the business operations of Wireless Age and Wireless Source.

41. Attached hereto as Exhibit “P” is a true copy of the letter of December 8, 2008.

42. Wireless Age and Wireless Source did consent to the appointment of MNP such that beginning on approximately December 9, 2008, MNP began a review and investigation of the business and financial operations of Wireless Source and Wireless Age.

43. Attached hereto as Exhibit “Q” is a true copy of a report prepared by MNP setting out MNP’s findings.

44. Of particular note from MNP’s report are the following:

(a) WACI has extracted cash from Wireless Age and/or Wireless Source in the amounts of \$548,000 in October, 2008, \$210,000 in November, 2008, and \$276,000 in December 2008, including \$91,000 on December 24, 2008.

(b) WACI extracted further sums of \$10,000 on December 31, 2008 and \$30,000 on January 2, 2009.

(c) The continued payment of management fees to WACI and Newlook prevents Wireless Age and Wireless Source from reducing their debt load.

(d) Wireless Age requires funds to bring its inventory levels up to that necessary to meet customer needs and expectations.

45. Upon being advised of the preliminary findings of MNP, SaskTel caused a letter dated January 2, 2009 to be sent to John Simmonds and Gary Hokkanen, CEO and CFO of WACI, demanding a meeting on January 5, 2009 to discuss the prospects of Wireless Age and Wireless Source meeting their obligations under the Repayment Agreement.

46. Attached hereto and marked as Exhibit "R" is a true copy of the letter of January 2, 2009 from MacPherson Leslie & Tyerman.

47. The meeting requested by the letter of January 2, 2009 was held at the offices of SaskTel in Regina, Saskatchewan on January 5, 2009. Wireless Age and Wireless Source were represented by John Simmonds and Gary Hokkanen. SaskTel was represented by myself, John Meldrum, Kristian Wells and Conrad Hadubiak. Ian Schofield was present on behalf of MNP.

48. At the meeting, SaskTel's concerns regarding the business operations of Wireless Age and Wireless Source were discussed as well as the continued payment of money by Wireless Age and Wireless Source to WACI and/or Newlook. If SaskTel's concerns regarding Wireless Age and Wireless Source were not addressed, SaskTel was prepared to immediately serve a Notice of Intent to Enforce Security and proceed to enforce its security.

49. Based on discussions at the meeting, SaskTel granted Wireless Age and Wireless Source 24 hours to present a proposal to address SaskTel's concerns. Among other issues discussed at the meeting, John Simmonds advised that no further funds would be withdrawn from Wireless Age and Wireless Source by WACI and Newlook without permission from SaskTel.

50. On or about January 6, 2009, SaskTel received a letter from Wireless Age as a follow up to the meeting. Wireless Age, in the letter, did not commit that further funds would not be

withdrawn from Wireless Age and Wireless Source, contrary to the verbal commitment made by John Simmonds the previous day. Attached hereto and marked as Exhibit "S" is a true copy of the letter of January 6, 2009 together with the enclosures.

51. The accounts payable aging listing attached to the letter of January 6, 2009 confirms that more than \$600,000 of the indebtedness owed by Wireless Age has been outstanding for more than 60 days.

52. Based on the information set forth in this affidavit, SaskTel believes that the business operations of Wireless Age and Wireless Source are in danger of collapse and that Wireless Age and Wireless Source continue to transfer money out of their business operations to their parent companies. As a result, SaskTel's security interest in the assets of Wireless Age and Wireless Source and its ability to recover the Indebtedness has been or will be significantly impaired.


53. It is SaskTel's intention to immediately serve a Notice of Intent to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*. However, waiting the required 10 days before taking steps to enforce the security will, in SaskTel's view, greatly increase the likelihood that additional monies will be taken out of Wireless Age and Wireless Source and paid to WACI or Newlook.

54. Attached hereto and marked as Exhibit "T" is a true copy of a Notice of Intent to Enforce Security dated January 5, 2009 that will be served on Wireless Age and Wireless Source.

55. SaskTel is requesting the appointment of Meyers Norris Penny Limited as Interim Receiver. It is the intention of SaskTel that the business operations of Wireless Age and Wireless Source would continue with all employees being retained in their current positions and receiving their current wages and benefits.

56. I make this affidavit in support of the application by SaskTel for an order appointing an Interim Receiver in respect of Wireless Age and Wireless Source.

SWORN BEFORE ME at the City of Regina, )  
in the Province of Saskatchewan, this 8<sup>th</sup> )  
day of January, 2009. )

  
\_\_\_\_\_  
A Commissioner of Oaths in and for the  
Province of Saskatchewan.

  
\_\_\_\_\_  
MICHAEL ANDERSON

*Am* My commissioner expires: *Am*  
or Being a Solicitor.

This Affidavit was delivered by:

MacPHERSON LESLIE & TYERMAN LLP  
Barristers & Solicitors  
1500 – 1874 Scarth Street  
Regina, Saskatchewan S4P 4E9

whose address for service is same as above.  
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