

NextWave Wireless Inc.  
Form 10-K  
March 12, 2012  
Table of Contents

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**FORM 10-K**

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

**For the fiscal year ended December 31, 2011**

**or**

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

**For the transition period from                      to**

**Commission File Number 001-33226**

**NextWave Wireless Inc.**

**(Exact name of registrant as specified in its charter)**

**Delaware**  
**(State or other jurisdiction of**

**20-5361630**  
**(I.R.S. Employer**

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Incorporation or organization)

12264 El Camino Real, Suite 305

Identification No.)

San Diego, California 92130

(Address of principal executive offices and ZIP code)

Registrant's telephone number, including area code: (619) 573-1570

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

Title of each class not applicable	Name of each exchange on which registered not applicable
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Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value \$0.007 per share

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

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

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

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

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

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

Large Accelerated Filer

Accelerated Filer

Non-Accelerated Filer

Smaller Reporting Company

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold as of the last business day of the registrant's most recently completed second fiscal quarter was \$3,429,000.

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

As of February 29, 2012, there were outstanding 24,938,132 shares of common stock of the Registrant.

**DOCUMENTS INCORPORATED BY REFERENCE**

Part III incorporates by reference certain information from the registrant's definitive proxy statement (the Proxy Statement) for the 2012 Annual Meeting of Shareholders to be filed on or before April 29, 2012.

**Table of Contents**

**FORM 10-K**

**NEXTWAVE WIRELESS INC.**

**Table of Contents**

	<b>Page</b>
<b>PART I</b>	
DEFINITIONS	
<u>DISCLOSURE REGARDING FORWARD LOOKING STATEMENTS</u>	1
Item 1 <u>BUSINESS</u>	2
Item 1A <u>RISK FACTORS</u>	11
Item 1B <u>UNRESOLVED STAFF COMMENTS</u>	19
Item 2 <u>PROPERTIES</u>	19
Item 3 <u>LEGAL PROCEEDINGS</u>	20
Item 4 <u>MINE SAFETY DISCLOSURE</u>	20
<b>PART II</b>	
Item 5 <u>MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES</u>	21
Item 6 <u>SELECTED FINANCIAL DATA</u>	23
Item 7 <u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	23
Item 8 <u>FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA</u>	38
Item 9 <u>CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE</u>	72
Item 9A <u>CONTROLS AND PROCEDURES</u>	72
Item 9B <u>OTHER INFORMATION</u>	72
<b>PART III</b>	
Item 10 <u>DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE</u>	74
Item 11 <u>EXECUTIVE COMPENSATION</u>	74
Item 12 <u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS</u>	74
Item 13 <u>CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE</u>	75
Item 14 <u>PRINCIPAL ACCOUNTANT FEES AND SERVICES</u>	75
<b>PART IV</b>	
Item 15 <u>EXHIBITS AND FINANCIAL STATEMENT SCHEDULE</u>	76
<u>SIGNATURES</u>	80

## Table of Contents

### DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K ( Annual Report ) and other reports, documents and materials we will file with the Securities and Exchange Commission (the SEC ) contain, or will contain, disclosures that are forward-looking statements that are subject to risks and uncertainties. All statements other than statements of historical facts are forward-looking statements. These statements, which represent our expectations or beliefs concerning various future events, may contain words such as may, will, expects, anticipates, intends, plans, believes, estimates, or other similar meaning in connection with any discussion of the timing and value of future results or future performance. These forward-looking statements are based on the current plans and expectations of our management and are subject to certain risks, uncertainties (some of which are beyond our control) and assumptions that could cause actual results to differ materially from historical results or those anticipated. These risks include, but are not limited to:

we have substantial debt maturities beginning in December 2012 and our cash reserves will not be sufficient to meet these payment obligations;

there can be no assurance that a further extension of the maturity dates of our debt, a refinancing, or asset sales yielding net proceeds sufficient to retire our debt will be achievable on acceptable terms;

because we currently do not have the ability to repay our debt at maturity, there is substantial doubt as to our ability to continue as a going concern, and our independent registered public accounting firm has included an explanatory paragraph highlighting this uncertainty in its report dated March 12, 2012;

the value of our equity securities is dependent on our ability to successfully retire our debt by consummating sales of most of our wireless spectrum assets for net proceeds substantially in excess of our cost basis for such assets;

we will need to rely on our substantial net operating loss carryforwards to offset the taxable gain that may arise as a result of successful spectrum sales, and if these carryforwards are limited, the after-tax proceeds from our spectrum sales will be reduced and the value of our equity securities or debt securities may be impaired;

we are highly leveraged and our operating flexibility is restricted by our debt covenants;

the terms of our Senior Secured Notes due 2012 (the Senior Notes ) and Senior-Subordinated Secured Second Lien Notes due 2013 (the Second Lien Notes ) require us to certify our compliance with a restrictive operating budget and any failure to comply with these terms will have adverse economic consequences;

changes in government regulations or continued adverse global economic conditions could affect the value of our wireless spectrum assets; and

we are subject to the other risks described under Risk Factors and elsewhere in the information contained or incorporated into this Annual Report.

There may also be other factors that cause our actual results to differ materially from the forward looking statements.

Because of these factors, we caution you that you should not place any undue reliance on any of our forward-looking statements. These forward-looking statements speak only as of the date of this Annual Report and you should understand that those statements are not guarantees of future performance or results. New risks and uncertainties arise from time to time, and it is impossible for us to predict those events or how

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they may affect us. Except as required by law, we have no duty to, and do not intend to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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**Table of Contents**

**PART I.**

**Item 1. Business**

*In this Annual Report on Form 10-K ( Annual Report ), the words NextWave, the Company, we, our, ours, and us refer to NextWave Wireless Inc. and, except as otherwise specified herein, to our subsidiaries. Our fiscal year ended on December 31, 2011.*

**Our Business**

NextWave Wireless Inc. is a holding company for a significant wireless spectrum portfolio. Our continuing operations are focused on the management of our wireless spectrum interests. Our total domestic spectrum holdings consist of approximately 3.9 billion MHz POPs. The term MHz-POPs is defined as the product derived from multiplying the number of megahertz associated with a license by the population of the license's service area. Our wireless spectrum portfolio covers approximately 218.6 million total POPs, with 104.8 million POPs covered by 20 MHz or more of spectrum, and an additional 94.9 million POPs covered by at least 10 MHz of spectrum. In addition, a number of markets, including much of the New York City metropolitan region, are covered by 30 MHz or more of spectrum. Our domestic spectrum resides in the 2.3 GHz Wireless Communication Services ( WCS ), 2.5 GHz Broadband Radio Service ( BRS )/Educational Broadband Service ( EBS ), and 1.7/2.1 GHz Advanced Wireless Service ( AWS ) bands and offers propagation and other characteristics suitable to support high-capacity, mobile broadband services.

Our international spectrum included in continuing operations include 2.3 GHz licenses in Canada with 15 million POPs covered by 30 MHz of spectrum.

We continue to pursue the sale of our wireless spectrum holdings and have retained Moelis & Company to explore the sale of our wireless holdings in United States and Canada. Any sale or transfer of the ownership of our wireless spectrum holdings is subject to regulatory approval.

We will be required to successfully monetize most of our wireless spectrum assets for net proceeds substantially in excess of our cost basis in order to retire our debt.

To date, we have sold approximately 92% of our domestic AWS spectrum licenses, of which we have realized a positive return on the sales. However, there can be no assurance that we will realize a similar return upon the sale of our remaining wireless spectrum holdings. The sale price of our wireless spectrum assets will be impacted by many factors outside of our control, including, among other things:

- the Federal Communication Commission's ( FCC ) new technical rules relating to the operation of satellite digital audio radio services and services using our WCS spectrum licenses;

- the timing and associated costs of build-out or substantial service requirements attached to our spectrum licenses, where a failure to comply with these requirements could result in license forfeiture;

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

- worldwide economic conditions which we believe have adversely affected manufacturers of telecommunications equipment and technology and led to a delay in global network deployments;

- timing and the availability of standardized technology and equipment that is able to operate in our licensed and leased spectrum;

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availability of wireless spectrum in the United States in particular, which could be affected by potential government auctions of spectrum not previously available in the market; and

availability of capital for prospective spectrum buyers, which has been negatively impacted by the downturn in the credit and financial markets.



**Table of Contents**

Our efforts to sell our wireless spectrum holdings on favorable terms has been delayed by current market conditions, as well as regulatory and other market activities involving potential buyers, including the acquisition of T-Mobile by AT&T which was abandoned in December 2011, and uncertainties relating to Sprint and Clearwire's WiMAX network deployment and their partnership. We are continuing to have discussions with numerous parties who have expressed interest in our various spectrum assets. However, we believe that adverse economic conditions and other factors beyond our control continue to affect potential purchasers of our wireless spectrum, and there can be no assurance as to the timing of further spectrum sales or the sales prices that will be attained, or that sales will be completed at all.

As of December 31, 2011, summary information about our current spectrum holdings in the United States is set forth below.

MEA(3)	MEA Name	POPs <sup>(4)</sup> (mm)	Type of Spectrum <sup>(1)(2)</sup>			Top Covered CMAs within MEA (POP Rank)
			BRS/EBS	WCS	AWS	
1	Boston	9.4				<i>Boston (10), Providence (50)</i>
2	New York City	31.9				<i>New York (2), Hartford (41)</i>
3	Buffalo	1.7				<i>Buffalo (45), New York 3 - Chautauqua (118)</i>
4	Philadelphia	8.8				<i>Philadelphia (6), Wilmington (75)</i>
7	Charlotte-Greensboro-Greenville-Raleigh	4.2				<i>NC 15 - Cabarrus (93), NC 4 - Henderson (139)</i>
8	Atlanta	0.9				<i>Savannah (183), Georgia 12 - Liberty (270)</i>
9	Jacksonville	1.2				<i>Jacksonville (37), Tallahassee (177)</i>
10	Tampa-St. Petersburg-Orlando	0.9				<i>Florida 4 - Citrus (77), Florida 3 - Hardee (304)</i>
15	Cleveland	4.7				<i>Cleveland (26), Akron (74)</i>
16	Detroit	10.6				<i>Detroit (7), Grand Rapids (59)</i>
17	Milwaukee	5.7				<i>Milwaukee (33), Madison (115)</i>
18	Chicago	14.1				<i>Chicago (3), Gary (80)</i>
20	Minneapolis-St. Paul	7.4				<i>Minneapolis (14), Minnesota 6 - Hubbard (201)</i>
21	Des Moines-Quad Cities	2.8				<i>Des Moines (102), Davenport (160)</i>
27	New Orleans-Baton Rouge	0.5				<i>Mobile (90)</i>
29	Kansas City	3.6				<i>Kansas City (27), Topeka (315)</i>
30	St. Louis	4.6				<i>St. Louis (18), Springfield (178)</i>
31	Houston	7.7				<i>Houston(5), Louisiana 5 - Beauregard (130)</i>
32	Dallas-Fort Worth	13.8				<i>Dallas (4), Austin (35)</i>
33	Denver	6.0				<i>Denver (16), Colorado Springs (87)</i>
34	Omaha	1.8				<i>Omaha (72), Lincoln (224)</i>
35	Wichita	1.4				<i>Wichita (96), Kansas 14 - Reno (394)</i>
36	Tulsa	1.1				<i>Tulsa (57), Oklahoma 4 - Norton(305)</i>
37	Oklahoma City	2.4				<i>Oklahoma City (44), Oklahoma 3 - Grant (287)</i>
38	San Antonio	4.2				<i>San Antonio (25), McAllen (73)</i>
39	El Paso-Albuquerque	2.9				<i>Albuquerque (70), El Paso (71)</i>
40	Phoenix	6.0				<i>Phoenix (13), Tucson (51)</i>
41	Spokane-Billings	2.4				<i>Spokane (119), Idaho 1 - Boundary (205)</i>
42	Salt Lake City	3.6				<i>Salt Lake City (32),Provo (112)</i>
43	San Francisco-Oakland-San Jose	15.1				<i>San Francisco (11), Sacramento (23)</i>
44	Los Angeles-San Diego	25.3				<i>Los Angeles (1), San Diego (18)</i>
45	Portland	4.3				<i>Portland (21), Salem (146)</i>
46	Seattle	5.6				<i>Seattle (20), Tacoma (69)</i>
48	Hawaii	1.4				<i>Honolulu (54), Hawaii 3 - Hawaii (385)</i>

Total (excluding overlaps)	218.6
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3

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**Table of Contents**

- (1) WCS, AWS, BRS and EBS licenses are assigned by the FCC for geographic service areas of varying sizes and shapes. WCS licenses are assigned by the FCC according to Major Economic Areas ( MEA ) or Regional Economic Area Groupings ( REAG ) (see further explanation below in Business-WCS Spectrum ). AWS licenses are assigned by the FCC according to REAGs, EAs, or CMAs (see further explanation below in Business-AWS Spectrum ). BRS spectrum is licensed both according to Geographic Service Areas with a 35-mile radius, subject to overlapping Geographic Service Areas of co-channel stations, and according to BTAs of various sizes. Our BRS spectrum currently is composed of licenses with 35-mile radius Geographic Service Areas, subject to overlapping Geographic Service Areas of co-channel stations. EBS spectrum is only licensed according to Geographic Service Areas with a 35-mile radius, subject to overlapping Geographic Service Areas of co-channel stations (see further explanation below in Business-BRS and EBS Spectrum ).
- (2) Our AWS, WCS and BRS spectrum is held directly through FCC licenses. Our EBS spectrum has been leased on a long-term basis from current license holders.
- (3) The data in this table is presented in terms of MEAs. MEAs are named for the largest metropolitan area contained within the licensed geographic service area, but are significantly larger than the metropolitan area for which they are named.
- (4) The source for our POP figure is derived from the 2010 census figures.

*WCS Spectrum*

We hold 30 licenses issued by the FCC for WCS spectrum, which were acquired pursuant to privately negotiated purchase agreements. The 2.3 GHz WCS band is divided into four frequency blocks, A through D. Blocks A and B have 10 MHz of spectrum each and blocks C and D have 5 MHz each. We hold WCS licenses in the A, B, C and D frequency blocks. The WCS A and B blocks are licensed in 52 individual geographic regions covering the United States, including the Gulf of Mexico, and are called Major Economic Areas ( MEA ). The WCS C and D blocks are licensed in six larger geographic regions, also covering the United States and are called Regional Economic Area Groupings ( REAGs ). Both MEAs and REAGs are of various sizes in terms of population and geographic coverage.

WCS licenses are allocated by the FCC for flexible use. This means that the spectrum can be used to provide any type of fixed, portable, mobile (except aeronautical mobile) or radiolocation services to individuals and businesses, including wireless broadband services. Any such services are subject to compliance with technical rules in Part 27, Title 47 of the Code of Federal Regulations ( CFR ), as well as any applicable border treaties or agreements governing operations near the Canadian and Mexican borders.

In 2010 and 2011, we had capital expenditure needs associated with certain build-out or substantial service requirements. These requirements apply to all of our licensed wireless spectrum, and generally must be satisfied as a condition of the license. The substantial service deadline for our domestic WCS spectrum was July 21, 2010 under the FCC rules effective at that time. However, the FCC adopted new rules on May 20, 2010, that, when they became effective on September 1, 2010, purported to replace the July 21, 2010 substantial service requirement with new requirements that must be met by March 4, 2014 and additional requirements that must be met by September 1, 2016. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC dismissed them on June 14, 2011 in accordance with its June 2010 announcement that all substantial service showings would be dismissed given the new performance requirements it had adopted. The FCC did grant all pending WCS license renewal applications, including those that we filed in April of 2007, conditioned on the outcome of an ongoing FCC rulemaking proceeding regarding wireless license renewal procedures. There can be no assurance as to how the FCC will ultimately treat the WCS license renewal applications. Failure to make the substantial service demonstrations by the new deadlines of March 4, 2014 and September 1, 2016 without seeking and obtaining an extension from the FCC would result in license forfeiture.

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**Table of Contents**

*BRS and EBS Spectrum*

Under current regulations, after giving effect to an FCC-mandated transition of the spectrum to a new band configuration, which must have been completed by October 19, 2010 (barring disputes in the transition process), the total spectrum bandwidth licensed by the FCC for BRS and EBS spectrum is 194 MHz. Approximately 75% of this spectrum is licensed for the EBS and 25% is licensed for the BRS. Under FCC Rules, regulations and policies ( FCC Rules ), up to 95% of the spectrum dedicated to each EBS license can be leased for commercial purposes subject to compliance with FCC Rules. After transitioning the BRS and EBS spectrum to the new band plan, individual channels and channel groups of BRS and EBS spectrum will range from 5.5 MHz to 23.5 MHz of spectrum. Most, but not all, BRS and EBS channel groups contain four channels and 23.5 MHz of spectrum.

Until 1996, BRS spectrum was licensed according to Geographic Service Areas with a 35-mile radius. These incumbent licenses continue to exist today, but are subject to overlapping Geographic Service Areas of co-channel stations. In 1996, the FCC conducted an auction and assigned licenses for available BRS spectrum according to BTAs of various sizes. These BTA licenses were granted subject to the prior rights of the incumbent BRS license holders. We have acquired licenses from incumbent BRS licensees, licensed for 35-mile Geographic Service Areas, subject to overlapping Geographic Service Areas of co-channel stations. EBS spectrum is licensed only for Geographic Service Areas with a 35-mile radius, subject to overlapping Geographic Service Areas of co-channel stations. In the future, vacant EBS spectrum may be assigned by BTAs, or some other licensing construct chosen by the FCC. EBS spectrum is licensed exclusively to accredited educational institutions, governmental organizations engaged in the formal education of enrolled students (e.g., school districts), and nonprofit organizations whose purposes are educational.

The FCC's rules for BRS and EBS spectrum were substantially revised in 2004 to provide more flexibility in how the spectrum is licensed and used; proceedings to revise the rules continue today. Use of the spectrum has evolved to include fixed and mobile, digital, two-way systems capable of providing high-speed, high-capacity broadband service, including two-way Internet access service via low-power, cellularized communication systems and single-cell high-power systems. On March 20, 2008, the FCC released an additional order to reform FCC Rules related to BRS and EBS spectrum. Although these new, amended rules became effective on June 9, 2008, they are subject to petitions for reconsideration. For a more detailed description of these new rules, see Government Regulation BRS/EBS License Conditions.

We have acquired BRS spectrum licenses from third parties pursuant to privately negotiated purchase agreements. Rights to lease and use EBS spectrum are acquired by commercial interests like us from educational entities through privately negotiated lease agreements. EBS licensees are permitted to enter into lease agreements with a maximum term of 30 years; however one of our long-term leases was entered into prior to the effective date of these new leasing requirements and its term, including options, exceeds 30 years. Lease agreements with terms longer than 15 years must contain a right of review by the EBS licensee every five years beginning in year 15.

*AWS Spectrum*

We acquired 154 AWS licenses in FCC Auction No. 66 and currently hold 12 AWS licenses. The FCC granted AWS spectrum pursuant to Economic Area ( EA ) licenses, REAG licenses and CMA licenses. The AWS auction involved a total of 1,122 licenses: 36 REAG licenses, 352 EA licenses, and 734 CMA licenses. EA, REAG and CMA licenses vary widely in terms of population and geographic coverage.

In terms of spectral size, the AWS spectrum is divided into six spectrum blocks, A through F. There are three 10 MHz blocks, each consisting of paired 5 MHz channels, and three 20 MHz blocks, each consisting of paired 10 MHz channels. We hold both 20 MHz and 10 MHz licenses.

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## **Table of Contents**

AWS licenses are allocated by the FCC for flexible use. This means that the spectrum can be used to provide any type of fixed, portable or mobile services to individuals and businesses, including the wireless broadband services. Any such offerings are subject to compliance with technical rules in Part 27, Title 47 of the CFR as well as any applicable border treaties or agreement governing operations near the Canadian and Mexican borders.

### *International Spectrum*

In 2007, we acquired WCS spectrum in Canada. Our Canadian licenses cover approximately 15 million POPs and include 30 MHz of spectrum in all service areas for which licenses were acquired, for a total of 445 million MHz POPs. The licenses vary widely in terms of population and geographic coverage, but include major cities, such as Montreal, Ottawa, Edmonton, Quebec and Winnipeg. NextWave's Canadian WCS licenses are held by our Canadian subsidiary, 4253311 Canada Inc. The licenses carry a 10-year license term with renewal expectancy of subsequent 10-year terms absent breach of license conditions. Because the licenses were issued by Industry Canada through two separate auctions, 63 licenses have an expiration date of November of 2014, while 24 licenses have an expiration date of April of 2015. The licenses are radiocommunication user licenses and cannot be used to provide service for compensation before the licenses are converted to either radiocommunication service provider licenses or radiocommunication carrier licenses. Conversion of the licenses will require compliance with Canadian ownership and control restrictions. In addition, each Canadian WCS license is subject to a 5-year usage implementation requirement, demonstrating that the spectrum is being used at a level that is acceptable to Industry Canada. Again, because the licenses were issued at two different times, there are two different implementation deadlines, November 2009 for 63 licenses, and April 2010 for the other 24 licenses. On July 2, 2009, we received a three year extension of the implementation requirement from the Canadian regulatory authority, making the new deadlines November of 2012 and April of 2013. As of December 31, 2011 we held 88 licenses, one of which was sold in February 2012. We are currently in discussions with Industry Canada, the spectrum regulator in Canada, about extending the deadline for the mid-term in-use demonstration. There can be no assurance that we will find a Canadian-controlled partner who will be able to provide a viable business plan and attract appropriate financing by the build out deadline. Failure to make the in-use demonstrations for each of our 87 licenses, in the absence of an extension by Industry Canada, could result in Industry Canada commencing a process to afford us the opportunity to demonstrate why the applicable licenses should not be revoked.

In February 2011, we sold licensed frequencies in Argentina, held by our subsidiary, Websky Argentina SA, an Argentine corporation and its subsidiaries, covering an aggregate of 42 MHz spectrum in the 2.5 GHz band in the Buenos Aires metro region and 180 kilometers surrounding the city covering 15.5 million POPs for a total of 651 million MHz POPs, to a third party under a share purchase agreement.

In Norway, Inquam Norway AS holds a nationwide 2.0 GHz license, valid until December 31, 2022.

## **Government Regulation**

### *Overview*

Communications industry regulation changes rapidly, and such changes could adversely affect us. The following discussion describes some of the major communications-related regulations that affect us, but numerous other substantive areas of regulation not discussed here also may influence our business.

In the United States, communications services are regulated to varying degrees at the federal level by the FCC and at the state level by public utilities commissions. Internationally, similar regulatory structures exist at the national and regional level. Our business is impacted by such regulation in a number of areas, including the licensing, leasing and use of spectrum, and the technical parameters, certification, marketing, operation and disposition of wireless devices. Applicable consumer protection regulations also are enforced at the federal and state levels.

## Table of Contents

The following summary of applicable regulations does not describe all present and proposed federal, state and local legislation and regulations affecting the communications industry in the United States or internationally. Some legislation and regulations are the subject of ongoing judicial proceedings, proposed legislation and administrative proceedings that could change the manner in which our industry is regulated and the manner in which we operate. We cannot predict the outcome of any of these matters or their potential impact on our business. See Risk Factors Risks Relating to Government Regulation.

### *Licensing and Use of U.S. Wireless Spectrum*

In the United States, the FCC regulates the licensing, construction, use, renewal, revocation, acquisition, lease and sale of our domestic licensed wireless spectrum holdings. Our domestic wireless spectrum holdings currently include licensed spectrum in the WCS, AWS and BRS bands, and leased spectrum in the EBS band. Our international wireless spectrum holdings, which currently include licensed spectrum in the 2.3 GHz and 2.0 GHz bands, are regulated by national regulatory authorities that have similar responsibilities to those of the FCC.

Certain general regulatory requirements apply to all licensed wireless spectrum. For example, certain build-out or substantial service requirements apply to most of our licensed wireless spectrum, which generally must be satisfied as a condition of the license. In the United States, the Communications Act and FCC Rules also require FCC prior approval for the acquisition, assignment or transfer of control of FCC licenses. Similar regulatory requirements regarding regulatory approval of license transfers exist internationally. In addition, FCC Rules permit spectrum leasing arrangements for a range of wireless licenses after FCC notification or prior approval depending upon the type of spectrum lease. The FCC, and the equivalent national regulatory authority in other countries where we hold spectrum licenses, set rules, regulations and policies to, among other things:

grant licenses in bands allocated for wireless broadband services;

regulate the technical parameters and standards governing wireless services, the certification, operation and marketing of radio frequency devices and the placement of certain transmitting facilities;

impose build-out or performance requirements as a condition of the license or of license renewals;

approve applications for license renewals;

approve assignments and transfers of control of licenses;

approve leases covering use of licenses held by other persons and organizations;

resolve harmful radiofrequency interference between users of various spectrum bands;

impose fines, forfeitures and license revocations for violations of rules; and

impose other obligations that are determined to be in the public interest.

Additionally, more specific regulatory requirements that apply to WCS, AWS, BRS and EBS spectrum are described below. Compliance with all of the foregoing regulatory requirements, and those listed below, increases our cost of doing business. For a description of an interference issue which may impact use of WCS, BRS and EBS spectrum, see Risk Factors Risks Relating to Government Regulation-Wireless Devices utilizing WCS, BRS and EBS spectrum may be susceptible to interference from Satellite Digital Audio Radio Services ( SDARS ).

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### *WCS License Conditions*

WCS licensees must comply with all applicable legal and technical rules imposed by the FCC, including those found in Part 27 of Title 47 of the CFR. WCS licenses are granted for ten-year license terms, and licensees are required under applicable Part 27 rules to demonstrate that they are providing substantial service in their license area within the initial license term. Substantial service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.

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**Table of Contents**

The substantial service deadline for our domestic WCS spectrum was July 21, 2010 under the FCC rules effective at that time. However, the FCC adopted new rules on May 20, 2010, that, when they became effective on September 1, 2010, purported to replace the July 21, 2010 substantial service requirement with new requirements that must be met by March 4, 2014 and additional requirements that must be met by September 1, 2016. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC dismissed them on June 14, 2011 in accordance with its June 2010 announcement that all substantial service showings would be dismissed given the new performance requirements it had adopted. The FCC did grant all pending WCS license renewal applications, including those that we filed in April of 2007, conditioned on the outcome of an ongoing FCC rulemaking proceeding regarding wireless license renewal procedures. There can be no assurance as to how the FCC will ultimately treat the WCS license renewal applications. Failure to make the substantial service demonstrations by the new deadlines of March 4, 2014 and September 1, 2016 without seeking and obtaining an extension from the FCC would result in license forfeiture. See Risk Factors Risks Relating to Government Regulation.

*BRS/EBS License Conditions*

Like WCS licenses, BRS and EBS licenses are granted for ten-year license terms, and licensees must comply with all applicable legal and technical rules imposed by the FCC, including those found in Part 27 of Title 47 of the CFR. Unlike WCS licenses, BRS and EBS licenses were granted at different times and, therefore, do not have a uniform expiration date. EBS licensees were required to demonstrate that they are providing substantial service in their license areas by November 1, 2011. To meet the substantial service requirements for EBS spectrum, we arranged with our EBS licensees to either (a) have the EBS licensee continue to use the spectrum to provide educational services in the cases where the EBS licensee is currently providing such service or (b) provide educational services on a network that was installed by us, at our cost, either of which option is intended to deliver educational services over the spectrum in compliance with the FCC's educational safe harbor to meet the substantial service showing by the deadline. We have completed build-out activities for our EBS leases. All of the EBS licensees with whom we have leases have filed substantial service showings, which the FCC has accepted. The substantial service deadline for the BRS spectrum was May 1, 2011. With respect to our domestic BRS spectrum, we have constructed and are operating a commercial system using the spectrum to meet the FCC substantial service requirement. The FCC accepted our substantial service showings and renewed our BRS licenses on September 20, 2011.

From 2004 to 2008, the FCC adopted a number of rule changes which create more flexible BRS/EBS spectrum rules to facilitate the growth of new and innovative wireless technologies and services, including fixed and mobile wireless broadband services. Although the proceedings to reform BRS/EBS rules have largely been completed, they remain subject to legal challenges and petitions for reconsideration and, thus, are subject to additional revisions. The FCC ordered the 2.5 GHz band to be reconfigured into three segments: upper- and lower-band segments for low-power operations, and a middle-band segment for high-power operations. The BRS/EBS band configuration eliminates the use of interleaved channels by licensees in favor of contiguous channel blocks. By creating contiguous channel blocks, and grouping high- and low-power users into separate portions of the BRS/EBS band, the new band plan reduces the likelihood of interference caused by incompatible uses and creates incentives for the development of low-power, cellularized broadband operations, which were inhibited by the prior band plan. The BRS/EBS band plan will allow licensees to use the 2496-2690 MHz spectrum in a more economical and efficient manner and will support the introduction of next-generation wireless technologies. The new rules preserve the operations of existing licensees, including educational institutions currently offering instructional TV programming, but require that licensees transition to the new band plan by October 19, 2010 (barring disputes in the transition process), which includes relocating licensees from their current channel assignments to new spectrum designations in the band.



## **Table of Contents**

### *AWS License Conditions*

AWS licensees must comply with all applicable legal and technical rules imposed by the FCC, including those found in Part 27 of Title 47 of the CFR. All of our AWS licenses are granted for a 15-year license term, with a renewal term of ten-years. AWS licensees are required to demonstrate that they are providing substantial service in their license area within the initial 15-year license term. For our AWS licenses, the renewal deadline and the substantial service build-out deadline is December 18, 2021. Failure to make the substantial service demonstration, without seeking and obtaining an extension from the FCC, would result in license forfeiture.

The AWS spectrum includes a large number of incumbent federal government and non-government operations that must be relocated to other spectrum. AWS licensees are required to coordinate their operations to avoid interfering with these incumbent stations until relocation is complete. A small number of these incumbent stations must be protected indefinitely. In certain cases, the AWS licensee must pay for the relocation of incumbent stations within the AWS licensee's license area. AWS licensees are effectively prohibited from deploying TDD systems in the AWS spectrum.

### *New Spectrum Opportunities and Spectrum Auctions*

Ongoing FCC proceedings and initiatives may affect the availability of spectrum for commercial wireless services. These proceedings may make more wireless spectrum available to potential buyers of our spectrum and may affect the demand for our spectrum. At this time, we have no plans to obtain additional spectrum through secondary markets acquisitions, leases or whatever mechanisms the FCC may establish including participation in FCC auctions.

### *Tower Siting*

Wireless systems must comply with various federal, state and local regulations that govern the siting, marking, lighting and construction of transmitter towers and antennas, including regulations promulgated by the FCC and FAA. FCC Rules subject certain tower locations to environmental and historic preservation statutory requirements. To the extent governmental agencies impose additional requirements on the tower siting process, the time and cost to construct and deploy towers could be negatively impacted. The FAA has proposed modifications to its rules that would impose certain notification requirements upon entities seeking to (i) construct or modify any tower or transmitting structure located within certain proximity parameters of any airport or heliport, and/or (ii) construct or modify transmission facilities using the 2500-2700 MHz radiofrequency band, which encompasses virtually all of the BRS/EBS frequency band. If adopted, these requirements could impose new administrative burdens upon users of BRS/EBS spectrum.

## **Employees**

As of December 31, 2011, we employed 11 full time employees and engaged 6 contractors.

## **Our History**

### *History of our Predecessor Company and the NextWave Telecom Group*

Our predecessor company NextWave Wireless Inc. ( Old NextWave Wireless ) was formed in 1996 as a wholly owned operating subsidiary of NextWave Telecom, Inc. ( NTI ). NTI sought to develop a nationwide CDMA-based PCS network. In 1998, NTI and its subsidiaries, including Old NextWave Wireless (the NextWave Telecom group ), filed for protection under Chapter 11 of the United States Bankruptcy Code. During the seven-year pendency of the Chapter 11 case, Old NextWave Wireless continued its involvement in the build-out of NTI's PCS network. Substantially all of the assets related to this build-out, except PCS licenses, were abandoned when NTI was sold to finance the plan of reorganization of the NextWave Telecom group described below.

## **Table of Contents**

During the pendency of the Chapter 11 case, NTI began to explore opportunities to create the technology for a broadband wireless network utilizing BRS spectrum in the 2.5 GHz frequency range. The capitalization of a new wireless technology company to pursue these opportunities was discussed with the stakeholders of the NextWave Telecom group and was made part of the plan of reorganization described below.

On March 1, 2005, the Bankruptcy Court confirmed the plan of reorganization of the NextWave Telecom group, including Old NextWave Wireless. In connection with the consummation of the plan of reorganization, NTI and its subsidiaries settled all outstanding claims of the FCC and obtained a release of claims pursuant to Section 1141 of the Bankruptcy Code. The plan of reorganization was funded with the proceeds from the sale of PCS spectrum licenses and provided for the payment in full of all the creditors of the NextWave Telecom group and the \$550 million cash funding of Old NextWave Wireless as a new wireless broadband technology company. Membership units of Old NextWave Wireless, which had been converted into a limited liability company in late 2004, were distributed to the former stockholders of NTI, together with cash and note consideration issued pursuant to the plan. Upon this distribution, on April 13, 2005, our predecessor Old NextWave Wireless emerged as NextWave Wireless LLC.

### *Corporate Conversion Merger*

To enable our listing on The NASDAQ Global Market in January 2007, we converted from a Delaware limited liability company to a Delaware corporation. The conversion was effectuated in November 2006 through the merger of a wholly owned subsidiary of ours with and into NextWave Wireless LLC. In the merger, NextWave Wireless LLC's equity holders received one share of our common stock for every six membership interests that they held. No fractional shares of our common stock were issued in connection with the corporate conversion merger. Instead, holders of LLC interests who would otherwise have been entitled to a fraction of a share of common stock were paid cash equal to \$1.00 per LLC interest not exchanged for a whole share of our common stock. Each holder of NextWave Wireless LLC's limited liability interests owned the same percentage of the outstanding equity of ours before and immediately after the corporate conversion merger. In addition, we assumed NextWave Wireless LLC's obligations under all our stock option plans and our subsidiaries.

### *Our Acquisitions and Efforts to Develop a Wireless Broadband Business*

In the period from 2005 through 2007, we made several strategic investments and acquisitions. The purpose of these acquisitions was to develop a breadth of products, technologies, spectrum assets and professional services to build a platform to provide advanced mobile multimedia and wireless broadband solutions to the market. We intended that our businesses would provide synergistic value to each other and collectively drive accelerated market penetration and share of the mobile multimedia and wireless broadband market, which we believed was poised for rapid growth. We acquired network infrastructure businesses included in our Networks segment, which was subsequently classified as discontinued in connection with our global restructuring initiative. These businesses included IP Wireless, Inc. and Go Networks, Inc., which were acquired in May 2007 and February 2007, respectively. In addition, during this time period we invested in our Semiconductor business and other assets in connection with our continuing operating businesses, including PacketVideo Corporation, which housed our mobile multimedia business. These businesses were sold or discontinued as part of our global restructuring initiative as described below. We also acquired certain wireless spectrum assets during this time period, including our WCS spectrum.

### *Global Restructuring Initiative and PacketVideo Disposition*

Several factors led to our decision to implement a global restructuring initiative in 2008, including adverse worldwide economic conditions, which we believe adversely affected manufacturers of telecommunications equipment and technology. In connection with the global restructuring initiative, we divested, either through sale, dissolution or closure, our network infrastructure businesses and our semiconductor business. We have also taken other cost reduction actions. The actions completed as a result of our global restructuring initiative are described

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## **Table of Contents**

in more detail in Note 6 to our Consolidated Financial Statements in this Annual Report under the heading Business Divestitures and Discontinued Operations.

In July 2009, we sold a 35% interest in our multimedia segment subsidiary, PacketVideo Corporation, to NTT DOCOMO, a customer of PacketVideo. In October 2010, we sold our remaining 65% interest in PacketVideo to NTT DOCOMO. Following the disposition of PacketVideo, our continuing operations have been focused on the management of our wireless spectrum interests.

### **Available Information**

We are a public company and are subject to the informational requirements of the Exchange Act. Accordingly, we file periodic reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information may be obtained by visiting the Public Reference Room of the SEC at 100 F Street NE, Room 1580, Washington, D.C. 20549 or by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains a website (<http://www.sec.gov>) that contains reports, proxy and information statements and other information regarding us and other issuers that file electronically.

Our website address is <http://www.nextwave.com>. We make available, free of charge through our website, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, and any amendments to these reports as soon as reasonably practicable after we electronically file such material with, or furnish such material to, the Securities and Exchange Commission. Our Code of Business Conduct and Ethics is available free of charge on our website.

The certifications of our Chief Legal Counsel and Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, in the capacities as our principal executive officer and principal financial officer, respectively, about the disclosure contained in this Annual Report are attached hereto.

### **Item 1A. Risk Factors**

*Our business involves a high degree of risk. You should carefully consider the following risks together with all of the other information contained in this Annual Report and our other filings with the SEC before making a future investment decision with respect to our securities. If any of the following risks actually occurs, our business, financial condition and results of operations could be materially adversely affected, and the value of our securities could substantially decline.*

#### **Risks Relating to Our Business**

*Our cash reserves will not be sufficient to meet the payment obligations under our secured notes at their current maturity dates and there can be no assurance that a further maturity extension, a refinancing transaction or sales of our wireless spectrum yielding sufficient proceeds to retire our indebtedness will be achieved. Any maturity extension or refinancing transaction may involve significant cost, including the accrual of payment-in-kind interest for an extended term which will increase our aggregate amount of indebtedness.*

As of December 31, 2011, the aggregate principal amount of our secured indebtedness was \$1,022 million. This amount includes our Senior Notes with an aggregate principal amount of \$137.8 million, our Second Lien Notes with an aggregate principal amount of \$193.3 million and our Third Lien Subordinated Secured Convertible Notes due 2011 (the Third Lien Notes and together with the Senior Notes and Second Lien Notes, the Notes ) with an aggregate principal amount of \$690.9 million. On December 14, 2011, we entered into an Amendment and Limited Waiver (the 2011 Amendment and Waiver ) to the agreements governing our Notes, under which the maturity of our First Lien Notes was extended to December 31, 2012, the maturity of our Second Lien Notes was extended to January 31, 2013, and the maturity of our Third Lien Notes was extended to February 28, 2013. No amendment or consent fee was paid to the Holders in connection with the 2011

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## Table of Contents

Amendment and Waiver. Our current cash reserves are not sufficient to meet our payment obligations under our secured notes at their current maturity dates. Additionally, we may not be able to consummate sales of our wireless spectrum assets yielding sufficient proceeds to retire this indebtedness at the current scheduled maturity dates. If we are unable to further extend the maturity of our secured notes, or identify and successfully implement alternative financing to repay our secured notes, the holders of our Notes could proceed against the assets pledged to collateralize these obligations. These conditions raise substantial doubt about our ability to continue as a going concern. Insufficient capital to repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing in the United States Bankruptcy Court. Any alternative financing and/or maturity extension of our Notes may be costly to obtain, and could involve the issuance of equity securities that could cause significant dilution to our existing stockholders.

A refinancing or further maturity extension of our secured notes may be costly to obtain, and, if successful, will result in a greater aggregate amount of indebtedness due at maturity resulting from the accrual of payment-in-kind interest for the extended term. Such extension could also involve the issuance of equity securities that could cause significant dilution to existing stockholders.

***Because we currently do not have the ability to repay our debt at maturity, there is substantial doubt as to our ability to continue as a going concern, and our independent registered public accounting firm has included an explanatory paragraph highlighting this uncertainty in its report dated March 12, 2012.***

In the event of a default, the holders of our notes could proceed against the assets pledged to collateralize these obligations, which include the Company's spectrum assets and the capital stock of its material subsidiaries. A failure to obtain a maturity extension or refinancing transaction could cause the Company to seek relief through a filing in the United States Bankruptcy Court. Our financial statements are prepared on a going concern basis, which assumes continuity of operations and realization of assets and satisfaction of liabilities in the ordinary course of business. Our financial statements do not include any adjustments related to the recovery of assets and classification of liabilities that might be necessary should we be unable to continue as a going concern. Our ability to continue as a going concern is predicated upon our ability to obtain a maturity extension or refinancing of our debt, or to consummate asset sales yielding net proceeds sufficient to retire our debt.

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

If we complete a refinancing transaction or obtain a maturity extension, the aggregate amount of our secured debt will be increased due to accrued payment-in-kind interest for the extended term to maturity. There is no guarantee that we will be able to find third parties interested in purchasing our wireless spectrum assets at prices sufficient to retire this debt prior to maturity, even if extended. If we are unable to consummate sales of our wireless spectrum assets for net proceeds that are sufficient to retire our indebtedness, the value of our equity securities will be significantly impaired or eliminated. The sale price of our wireless spectrum assets will be impacted by many factors beyond our control including, among other things:

the FCC's new technical rules relating to the operation of satellite digital audio radio services and services using our WCS spectrum licenses;

the timing and allocated costs of build-out or substantial service requirements attached to our domestic and international spectrum licenses, where a failure to comply with these requirements could result in license forfeiture;

timing of closure of potential sales, particularly if it is necessary to accelerate the planned sale of certain of our spectrum licenses in order to meet debt payment obligations if we are not able to obtain a maturity extension;

worldwide economic conditions, which we believe have adversely affected manufacturers of telecommunications equipment and technology and led to a delay in global network deployments;

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**Table of Contents**

timing and the availability of standardized technology and equipment that is able to operate in our licensed and leased spectrum;

availability of wireless spectrum in the United States in particular, which could be affected by potential government auctions of spectrum not previously available in the market; and

availability of capital for prospective spectrum bidders, which has been negatively impacted by the downturn in the credit and financial markets.

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

***If we successfully monetize our wireless spectrum assets at prices substantially in excess of our cost basis in order to retire our debt, we will rely on our substantial net operating loss carryforwards to offset the taxable gains that may arise as a result of such sales. Accordingly, if the use of our expected net operating loss carryforwards becomes limited, the after-tax proceeds realized from our spectrum sales may be reduced and the value of our equity securities or debt securities may be impaired.***

As stated above, our capital structure requires that we successfully monetize a substantial portion of our wireless spectrum assets for net proceeds substantially in excess of our cost basis in order to retire our debt. The value of our equity securities is dependent on our ability to successfully retire our debt. We estimate that, as of December 31, 2011, we had federal income tax net operating loss carryforwards ( NOLs ) of approximately \$908.1 million, which begin to expire in 2023. We plan to use our NOLs to offset future gains on the sale of our spectrum assets. If our ability to use our NOLs as anticipated to offset any gains is limited, the after-tax proceeds realized from our spectrum sales may be reduced. Depending on the ultimate sale prices for our spectrum assets, the availability of our NOLs may be essential to ensuring the full payment of our Third Lien Notes and/or the realization of value for our equity securities.

Under Section 382 of the Internal Revenue Code of 1986, as amended, a corporation that undergoes an ownership change may generally thereafter only utilize its pre-change losses to offset a fixed amount of taxable income per year, subject to certain adjustments. A corporation generally undergoes an ownership change if the percentage of stock of the corporation owned by one or more 5% shareholders has increased by more than 50 percentage points over a three-year period (with certain groups of less-than-5% shareholders treated as a single shareholder for this purpose).

Based on our analysis to date, we do not believe that we have undergone an ownership change in the past. However, subsequent changes in our stock ownership, including the purchase or sale of our common stock by 5% shareholders, changes in the indirect beneficial ownership of such stock, and issuances or redemptions of common stock or other equity securities by us, could result in an ownership change that would trigger the imposition of limitations under Section 382. If an ownership change occurs, the availability of our NOLs for use may be severely limited, subject to an adjustment for so-called net built-in gains that are recognized within the five-year period after the ownership change. Although we would expect to significantly benefit from the adjustment for net built-in gains with respect to any spectrum sales following an ownership change, the availability of our NOLs against any future gains from such sales may nevertheless be materially impaired.

The amount and availability of our NOLs is subject to examination and adjustment by the Internal Revenue Service (IRS). Accordingly, there is no assurance that the IRS will agree with our determination as to the available amount of NOLs in respect of any spectrum sales. In addition, the rules relating to U.S. federal income taxation are under ongoing review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department, resulting in revisions of regulations and revised interpretations of established concepts, as well as statutory changes. Revisions in U.S. federal tax laws and interpretations thereof could adversely impair our currently expected ability to use our NOLs.

## Table of Contents

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

As of December 31, 2011, the aggregate principal amount of our secured indebtedness was \$1,022 million. This amount includes our Senior Notes with an aggregate principal amount of \$137.8 million, our Second Lien Notes with an aggregate principal amount of \$193.3 million and our Third Lien Notes with an aggregate principal amount of \$690.9 million. Covenants in the purchase agreements for our Senior Notes and Second Lien Notes impose operating and financial restrictions on us. These restrictions prohibit or limit our ability, and the ability of our subsidiaries, to, among other things:

pay dividends to our stockholders;

incur, or cause to incur, additional indebtedness or incur liens;

sell assets for consideration other than cash or for net proceeds less than our cost basis;

consolidate or merge with or into other companies;

issue shares of our common stock or securities of our subsidiaries;

make capital expenditures or other strategic investments in our business not contemplated by our operating budget; or

acquire assets or make investments.

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

limit our ability to pursue business opportunities;

render us more vulnerable to general adverse economic, regulatory and industry conditions; and

require us to dedicate proceeds from asset sales to service our debt.

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

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

The terms of our Senior Notes and Second Lien Notes require us to deliver a six-month operating budget to the noteholders on a quarterly basis, which budget is reasonably acceptable to Avenue AIV US, L.P., an affiliate of Avenue Capital Management II, L.P. ( Avenue Capital II ). Avenue Capital II holds 78% of the aggregate principal amount of our Second Lien Notes and 75% of the aggregate principal amount of our Senior Notes. We must deliver monthly certifications relating to our cash balances to the holders of our Senior Notes and Second Lien Notes. If we are unable to certify that our cash balances have not deviated in a negative manner by more than 10% from budgeted balances, default

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interest will accrue and, if such condition persists for three monthly reporting periods, an event of default would occur under our Senior Notes and Second Lien Notes and, if the maturity of the foregoing indebtedness were to be accelerated, an event of default would occur under our Third Lien Notes. In addition, we must certify that we have maintained a minimum cash balance of \$1.0 million, and any failure to maintain such minimum cash balance will result in an immediate event of default under our Senior Notes and Second Lien Notes and, if the maturity of the foregoing indebtedness were to be accelerated, our Third Lien Notes. Upon an acceleration of our debt following an event of default, the holders of our notes could proceed against the assets pledged to collateralize these obligations, which include our spectrum assets and substantially all of our other assets, which would impair our ability to continue as a going concern.

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**Table of Contents**

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

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

On September 16, 2008, a putative class action lawsuit, captioned Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants, was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys' fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned Benjamin et al. v. NextWave Wireless Inc. et al. was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint, and we subsequently filed a Motion to Dismiss. On March 16, 2011, the Court granted our Motion and dismissed the complaint without prejudice. On May 5, 2011, the lead plaintiff filed a Third Amended Complaint, and we again filed a Motion to Dismiss. On November 21, 2011, the Court granted our Motion and dismissed the case with prejudice. On December 19, 2011, the lead plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeals. The lead plaintiff's initial brief is due on March 28, 2012 and our response will be due on April 27, 2012. We have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time.

*Our common stock is no longer traded on The Nasdaq Global Market ( Nasdaq ) or any national securities exchange, and investors no longer have the benefit of certain exemptions from state securities laws governing resales, liquidity benefits and governance protections afforded by a Nasdaq (or other national securities exchange) listing.*

As a result of our delisting from Nasdaq in July 2010, we are not currently subject to its corporate governance requirements and investors may not have the same protections as are afforded to stockholders of companies listed on Nasdaq. For example, we are no longer required to maintain a majority of independent directors on our Board of Directors. Delisting from Nasdaq may also result in increased obligations under state securities laws and decreased coverage by securities analysts.

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



## **Table of Contents**

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

### **Special Risk Considerations Relating to our October 2010 Sale of our Remaining Interest in PacketVideo Corporation to NTT DOCOMO, INC.**

*We no longer have any significant operating revenues.*

Given our previous divestiture and/or discontinuation of operations of our network infrastructure subsidiaries, all of our significant operating revenues during the first nine months of 2010 were generated by PacketVideo. After the sale of the PacketVideo shares to DOCOMO in October 2010, we no longer have any significant operating revenues and, if we are not able to successfully sell our wireless spectrum assets to generate cash flow, we may not be able to comply with our debt covenants and may not be able to continue as going concern.

*Following the sale, we became a very small public company without any significant operating revenues.*

The Company remains a publicly traded company and continues to be subject to SEC rules and regulations, including the Sarbanes-Oxley Act of 2002. While all public companies face the costs and burdens associated with being publicly traded, given the small size of our company and the lack of significant operating revenues, these costs and burdens are significant to us.

### **Risks Relating to Government Regulation**

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

Certain build-out or substantial service requirements apply to our licensed wireless spectrum, which generally must be satisfied as a condition of the license and/or license renewal. In particular, for our domestic WCS spectrum, there are two substantial service build-out deadlines: March 4, 2014 and September 1, 2016; and for our domestic AWS spectrum, the substantial service build-out deadline is December 18, 2021. Failure to make the substantial service demonstration domestically, without seeking and obtaining an extension from the FCC, would result in forfeiture of the affected license.

The substantial service deadline for our domestic WCS spectrum was July 21, 2010 under the FCC rules effective at that time. However, the FCC adopted new rules on May 20, 2010, that, when they became effective on September 1, 2010, purported to replace the July 21, 2010 substantial service requirement with new requirements that must be met by March 4, 2014 and additional requirements that must be met by September 1, 2016. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC dismissed them on June 14, 2011 in accordance with June 2010 announcement that all substantial service showings would be dismissed given the new performance requirements it had adopted. Failure to make the substantial service demonstrations by the new deadlines of March 4, 2014 and September 1, 2016 without seeking and obtaining an extension from the FCC would result in license forfeiture.

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## **Table of Contents**

AWS licensees must comply with all applicable legal and technical rules imposed by the FCC, including those found in Part 27 of Title 47 of the CFR. All of our AWS licenses are granted for a 15-year license term, with a renewal term of ten years. AWS licensees are required to demonstrate that they are providing substantial service in their license area within the initial 15-year license term. For our AWS licenses, the renewal deadline and the substantial service build-out deadline is December 18, 2021. Failure to make the substantial service demonstration, without seeking and obtaining an extension from the FCC, would result in license forfeiture.

The AWS spectrum includes a large number of incumbent federal government and non-government operations that must be relocated to other spectrum. AWS licensees are required to coordinate their operations to avoid interfering with these incumbent stations until relocation is complete. A small number of these incumbent stations must be protected indefinitely. In certain cases, the AWS licensee must pay for the relocation of incumbent stations within the AWS licensee's license area. AWS licensees are effectively prohibited from deploying time-division duplex (TDD) systems in the AWS spectrum. These requirements could affect the value of our AWS spectrum.

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

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

In Canada, our 2.3 GHz licenses are subject to mid-term in-use demonstration requirements by November 2012 and April 2013 for 63 and 24 of our licenses which are subject to renewal in November of 2014 and April of 2015, respectively. In order for us to operate our Canadian spectrum under Canadian ownership rules, we will need a Canadian-controlled partner. Similar to the U.S., Canada has allocated the 2.3 GHz band for both SDARS and mobile broadband uses, which necessitates the adoption of technical rules to protect against interference between the two uses. Canada has recently begun the process of developing such technical rules for the band. Until the technical rules are final, which in turn will allow the development of manufacturing standards for vendors to use to produce readily available commercial mobile equipment, deployment in the band for mobile services cannot occur. We are currently in discussions with Industry Canada, the spectrum regulator in Canada, about extending the deadline for the mid-term in-use demonstration. There can be no assurance that we will find a Canadian-controlled partner who will be able to provide a viable business plan and attract appropriate financing by the build out deadline. Failure to make the in-use demonstrations for each of our 87 licenses, in the absence of an extension by Industry Canada, could result in Industry Canada commencing a process to afford us the opportunity to demonstrate why the applicable licenses should not be revoked.

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

With few exceptions, commercial enterprises are restricted from holding licenses for EBS spectrum. Eligibility for EBS spectrum is limited to accredited educational institutions, governmental organizations engaged in the formal education of enrolled students (e.g., school districts), and nonprofit organizations whose purposes are educational. Access to EBS spectrum can only be gained by commercial enterprises through privately negotiated EBS lease agreements. FCC regulation of EBS leases, private interpretation of EBS lease terms, private contractual disputes, and failure of an EBS licensee to comply with FCC regulations all could impact our use of EBS spectrum and the value of our leased EBS spectrum. The FCC rules permit EBS licensees to enter into lease agreements with a maximum term of 30 years; lease agreements with terms longer than 15 years must contain a right of review by the EBS licensee every five years beginning in year 15. The right of

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**Table of Contents**

review must afford the EBS licensee with an opportunity to review its educational use requirements in light of changes in educational needs, technology, and other relevant factors and to obtain access to such additional services, capacity, support, and/or equipment as the parties shall agree upon in the spectrum leasing arrangement to advance the EBS licensee's educational mission. A spectrum leasing arrangement may include any mutually agreeable terms designed to accommodate changes in the EBS licensee's educational use requirements and the commercial lessee's wireless broadband operations. In addition, the terms of EBS lease agreements are subject to contract interpretation and disputes could arise with EBS licensees. There can be no assurance that EBS leases will continue for the full lease term, or be extended beyond the current term, or be renewed or extended on terms that are satisfactory to us, or at all. Similarly, since we are not eligible to hold EBS licenses, we must rely on EBS licensees with whom we contract to comply with FCC rules. The failure of an EBS licensee from whom we lease spectrum to comply with the terms of their FCC authorization or FCC rules could result in termination, forfeiture or non-renewal of their authorization, which would negatively impact the amount of spectrum available for our use.

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

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

We hold 30 licenses issued by the FCC for WCS spectrum. Renewal applications for all 2.3 GHz WCS licenses, including those issued to us, were due to be filed with the FCC on July 21, 2007. We filed our WCS renewal applications on April 23, 2007. Under FCC rules, licenses continue in effect during the pendency of timely filed renewal applications. We are aware of three parties that made filings purporting to be competing applications in response to the renewal applications that we, AT&T, and others filed. The basis on which the third-party filings were made was the alleged failure of WCS licensees to deploy service on WCS spectrum and satisfy substantial service requirements by July 21, 2007. However, on December 1, 2006, the FCC issued a waiver order extending the substantial service deadline for WCS licensees to July 21, 2010. The FCC's rules contain no procedures for processing competing applications filed for WCS spectrum and the FCC has not accepted them for filing. The FCC granted all pending WCS license renewal applications, including those that we filed in April of 2007. However, the grant of these applications was conditioned on the outcome of an ongoing FCC rulemaking proceeding regarding wireless license renewal procedures in which the FCC has proposed to dismiss all pending competing applications. There can be no assurance of how the FCC will ultimately treat the competing applications or the WCS license renewal applications.

Industry Canada, Canada's spectrum regulatory body, has similar rules and policies to those of the FCC and therefore the requirements for retention and renewal and the risks of revocation are similar to those stated above. For example, as in the U.S., licensees of Canadian spectrum must comply with construction requirements in order to retain their licenses. Our 87 Canadian licenses each have a 10 year term, 63 of which expire in November 2014 and 24 of which expire in April 2015.

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

Under applicable FCC and equivalent international rules, users of wireless spectrum must comply with technical rules that are intended to eliminate or diminish harmful radiofrequency interference between wireless

**Table of Contents**

users. Licensed spectrum is generally entitled to interference protection, subject to technical rules applicable to the radio service, while unlicensed spectrum has no interference protection rights and may be subject to interference caused by other users.

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

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

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

Our wireless operations are dependent upon access to towers and antenna sites which are subject to national, state and local regulatory requirements related to registration, zoning, siting, lighting, marking, environmental impacts and maintenance. Network service, enhancements to service and product launches can be delayed or made more expensive due to compliance with these regulatory requirements.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

We are headquartered in San Diego, California. We currently occupy the indicated square footage in the leased facility described below. Our owned facility is occupied by our lessee, pursuant to a lease with a term through May 2015, with two five-year options to renew.

**Number**

<b>of Buildings</b>	<b>Location</b>	<b>Status</b>	<b>Square Footage</b>	<b>Primary Use</b>
1	United States	Leased	5,409	Administrative, finance and legal offices
1	United States	Owned	30,000	Office and Warehouse discontinued operations (currently held for sale)
<b>Total</b>			<b>35,409</b>	

We believe that our properties are adequate for our business as presently conducted.

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**Table of Contents**

**Item 3. Legal Proceedings**

On September 16, 2008, a putative class action lawsuit, captioned Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants, was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys' fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned Benjamin et al. v. NextWave Wireless Inc. et al. was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint, and we subsequently filed a Motion to Dismiss. On March 16, 2011, the Court granted our Motion and dismissed the complaint without prejudice. On May 5, 2011, the lead plaintiff filed a Third Amended Complaint, and we again filed a Motion to Dismiss. On November 21, 2011, the Court granted our Motion and dismissed the case with prejudice. On December 19, 2011, the lead plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeals. The lead plaintiff's initial brief is due on March 28, 2012 and our response will be due on April 27, 2012. We have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time.

We are also currently involved in other legal proceedings in the ordinary course of our business operations. We estimate the range of liability related to pending litigation where the amount and range of loss can be estimated. We record our best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, we record the minimum estimated liability related to the claim. As additional information becomes available, we assess the potential liability related to our pending litigation and revise our estimates. As of December 31, 2011, we have not recorded any significant accruals for contingent liabilities associated with our legal proceedings based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time. Revisions to our estimate of the potential liability could materially impact future results of operations.

**Item 4. Mine Safety Disclosure**

None.

**Table of Contents****PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.****Over-the-Counter Trading**

Our common stock is quoted under the symbol WAVE.PK on the OTCQB, an over-the-counter electronic quotation service operated by Pink OTC Markets Inc.

As a result of our delisting from Nasdaq as of July 23, 2010, we are not currently subject to its corporate governance requirements and our stockholders may not have the same protections as are afforded to stockholders of companies listed on the Nasdaq. For example, we are no longer required to maintain a majority of independent directors on our Board of Directors. Delisting from the Nasdaq may also result in increased obligations under state securities laws and decreased coverage by security analysts.

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

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

**Market Information**

The following table reflects the high and low sales prices, or high and low bid prices, as applicable, rounded to the nearest penny, of our common stock as reported by The NASDAQ Global Market, as applicable, for each quarterly period until July 23, 2010 (as adjusted for 1:7 reverse stock split) and as reported by OTCQB as of July 23, 2010. Our common stock was listed on The NASDAQ Global Market, beginning on January 3, 2007 under the symbol WAVE, where it continued to trade until July 23, 2010. On July 23, 2010, our stock began trading on the OTCQB under the symbol WAVE.PK, where it continues to trade today.

	<b>High</b>	<b>Low</b>
<b>2011:</b>		
Fourth Quarter	\$ 0.25	\$ 0.06
Third Quarter	0.34	0.09
Second Quarter	0.66	0.30
First Quarter	1.01	0.56
<b>2010:</b>		
Fourth Quarter	\$ 1.65	\$ 0.66
Third Quarter	2.33	0.75
Second Quarter	3.29	1.07
First Quarter	4.20	2.31

## **Table of Contents**

### **Dividend Policy**

We have never paid a dividend on our common stock and do not anticipate paying one in the foreseeable future. Pursuant to the terms of the Purchase Agreements governing our Senior Notes, Second Lien Notes and Third Lien Notes, we are restricted from paying dividends and making distributions to holders of our capital stock. In the event we are permitted to pay a dividend on our common stock, the payment of any future dividends will be at the discretion of our Board and will depend upon, among other things, our financial condition and capital needs, legal or contractual restrictions on the payment of dividends and other factors deemed pertinent by our Board.

For additional information on payment of and restrictions on dividends, please also refer to our audited consolidated financial statements and the notes thereto included elsewhere in this Annual Report.

### **Repurchases of Common Stock**

We did not repurchase any of our common stock during the fiscal year ended December 31, 2011.

### **Holdings**

As of February 29, 2011 there were 863 holders of record of our common stock.

Certain provisions in our Certificate of Incorporation and Bylaws may have the effect of delaying, deferring or preventing a change of control of our Company. These provisions include that our directors serve staggered terms, and, pursuant to Delaware law, can only be removed for cause; stockholders cannot act by written consent and can only amend or repeal the bylaws by a supermajority vote of the issued and outstanding voting shares and our board of directors is authorized to issue preferred stock without stockholder approval. In addition, vacancies on our Board of Directors are filled only through a majority vote of the Board, and directors and officers are indemnified against losses that they may incur in investigations and legal proceedings resulting from their services to us, including in connection with takeover defense measures.

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## **Table of Contents**

### **Item 6. Selected Financial Data.**

Not applicable.

### **Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

*In addition to historical information, the following discussion contains forward-looking statements that are subject to risks and uncertainties. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof, and should be aware that our actual results could differ substantially from those anticipated by such forward-looking information due to a number of factors, including but not limited to risks described in the section entitled Risk Factors and elsewhere in this Annual Report. Any forward-looking statements should be considered in light of these factors. Unless otherwise required by law, the Company undertakes no obligation, and expressly disclaims any obligation, to update or publicly release the results of any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events, or otherwise. Additionally, the following discussion and analysis should be read in conjunction with the consolidated financial statements and the notes thereto included elsewhere in this Annual Report.*

*We operate on a 52-53 week fiscal year ending on the Saturday nearest to December 31 of the current calendar year or the following calendar year. Normally, each fiscal year consists of 52 weeks, but every five or six years the fiscal year consists of 53 weeks. Fiscal year 2011 is a 52-week year ending on December 31, 2011 and 2010 is a 52-week year ending on January 1, 2011.*

*The accompanying financial statements have been prepared on the basis of accounting principles applicable to a going concern, which contemplates the realization of assets and extinguishment of liabilities in the normal course of business. As more fully described in Note 1 to the consolidated financial statements, we have incurred recurring operating losses and have substantial debt maturities in 2012 and 2013 and our cash reserves will not be sufficient to meet these payment obligations. These conditions raise substantial doubt about our ability to continue as a going concern. The accompanying consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.*

## **OVERVIEW**

### **Fiscal Year 2011**

Our net loss from continuing operations during 2011 was \$265.9 million compared to \$155.4 million, and \$193.4 million prior to the gain on extinguishment of debt of \$38.0 million, for 2010.

On December 14, 2011, we entered into an Amendment and Limited Waiver (the 2011 Amendment and Waiver) to our Senior Secured Notes (the Senior Notes), our Senior Subordinated Secured Second Lien Notes (the Second Lien Notes) and our Third Lien Subordinated Secured Convertible Notes (the Third Lien Notes), and together with the Senior Notes and Second Lien Notes, the Notes, whereby all holders of our Senior Notes, Second Lien Notes and Third Lien Notes agreed to extend the maturity of the Senior Notes to December 31, 2012; extend the maturity of the Second Lien Notes to January 31, 2013; extend the maturity of the Third Lien Notes to February 28, 2013; and permanently waive past events of default under the Notes. No amendment or consent fee was paid to the Holders in connection with the 2011 Amendment and Waiver.

### **Our Business**

NextWave Wireless Inc. is a holding company for our wireless spectrum portfolio. Our continuing operations are focused on the management of our wireless spectrum interests. Our total domestic spectrum holdings consist of approximately 3.9 billion MHz POPs. The term MHz-POPs is defined as the product derived from multiplying the number of megahertz associated with a license by the population of the license.



## **Table of Contents**

service area. Our wireless license portfolio covers approximately 218.6 million total POPs, with 104.8 million POPs covered by 20 MHz or more of spectrum, and an additional 94.9 million POPs covered by at least 10 MHz of spectrum. In addition, a number of markets, including much of the New York City metropolitan region, are covered by 30 MHz or more of spectrum. Our domestic spectrum resides in the 2.3 GHz Wireless Communication Services ( WCS ), 2.5 GHz Broadband Radio Service ( BRS )/Educational Broadband Service ( EBS ), and 1.7/2.1 GHz Advanced Wireless Service ( AWS ) bands and offers propagation and other characteristics suitable to support high-capacity, mobile broadband services.

Our international spectrum included in continuing operations include 2.3 GHz licenses in Canada with 15 million POPs covered by 30 MHz of spectrum.

We continue to pursue the sale of our wireless spectrum holdings and have retained Moelis & Company to explore the sale of our wireless holdings in United States and Canada. Any sale or transfer of the ownership of our wireless spectrum holdings is subject to regulatory approval.

We will be required to successfully monetize most of our wireless spectrum assets for net proceeds substantially in excess of our cost basis in order to retire our debt.

The sale price of our wireless spectrum assets will be impacted by many factors outside of our control, including, among other things:

- the Federal Communication Commission's ( FCC ) new technical rules relating to the operation of satellite digital audio radio services and services using our WCS spectrum licenses;

- the timing and associated costs of build-out or substantial service requirements attached to our spectrum licenses, where a failure to comply with these requirements could result in license forfeiture;

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

- worldwide economic conditions which we believe have adversely affected manufacturers of telecommunications equipment and technology and led to a delay in global network deployments;

- timing and the availability of standardized technology and equipment that is able to operate in our licensed and leased spectrum;

- availability of wireless spectrum in the United States in particular, which could be affected by potential government auctions of spectrum not previously available in the market; and

- availability of capital for prospective spectrum buyers, which has been negatively impacted by the downturn in the credit and financial markets.

Our efforts to sell our wireless spectrum holdings on favorable terms has been delayed by current market conditions, as well as regulatory and other market activities involving potential buyers, including the acquisition of T-Mobile by AT&T which was abandoned in December 2011, and uncertainties relating to Sprint and Clearwire's WiMAX network deployment and their partnership. We are continuing to have discussions with numerous parties who have expressed interest in our various spectrum assets. However, we believe that adverse economic conditions and other factors beyond our control continue to affect potential purchasers of our wireless spectrum, and there can be no assurance as to the timing of further spectrum sales or the sales prices that will be attained, or that sales will be completed at all.

## ***Discontinued Operations***

## Edgar Filing: NextWave Wireless Inc. - Form 10-K

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

## **Table of Contents**

Our discontinued international operations hold a nationwide 2.0 GHz license in Norway.

## **RESULTS OF OPERATIONS**

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

### ***Comparison of Our Fiscal Year Ended December 31, 2011 (Fiscal Year 2011) to Our Fiscal Year Ended January 1, 2011 (Fiscal Year 2010) Continuing Operations***

#### **General and Administrative**

General and administrative expenses from continuing operations during 2011 were \$22.1 million compared to \$28.8 million for 2010. The \$6.7 million decrease is attributable primarily to \$4.1 million in lower maintenance expenditures associated with certain build-out or substantial service requirements of our licensed wireless spectrum, which generally must be satisfied as a condition of the license, a \$2.1 million net credit during 2011 for the settlement of insurance claims resulting from a change in health insurance plans, \$0.1 million in impairment losses recognized during 2010 and the remainder of \$0.4 million in lower overhead costs resulting primarily from our sale of a business unit in 2010 which reduced the size of our operations.

Included in general and administrative expenses during 2011 and 2010 is \$7.6 million and \$7.7 million, respectively, of amortization of finite-lived wireless spectrum. Also included in general and administrative expenses during 2011 and 2010 is \$0.7 million and \$1.1 million, respectively, of share-based compensation expense.

#### **Restructuring Credits**

During 2011, we renegotiated our \$1.9 million long-term lease obligation, which resulted from a previous renegotiation of one of our abandoned lease liabilities, paid \$0.8 million in full settlement of this obligation and recognized a \$1.1 million credit to restructuring charges of continuing operations in the consolidated statements of operations.

During 2010 we recognized \$0.3 million in restructuring expense credits resulting from favorable contract termination settlements and \$0.3 million in lower than estimated fees associated with marketing our Canadian spectrum.

#### **Net Gains on Sales of Wireless Spectrum Licenses**

During 2011, we recognized \$0.3 million in net gains on sales of wireless spectrum licenses, which represent our sale of an AWS license and receipt of a holdback payment that was released to us by the spectrum buyer upon expiration of a milestone for an indemnity obligation aggregating \$1.1 million.

During 2010, we recognized net gains on sales of our wireless spectrum licenses of \$5.5 million, after deducting incremental costs of \$1.0 million. These net gains during 2010 include lease payments received by us, pending completion of the sale of certain of our owned WCS spectrum licenses in the United States to a third party, of \$0.3 million and the forfeiture of a spectrum license sales deposit received by us of \$0.3 million.

#### **Interest Expense**

Interest expense from continuing operations during 2011 was \$248.3 million, compared to \$211.9 million during 2010, an increase of \$36.4 million. The increase is primarily attributable to higher principal and paid-in-kind interest and the March 2010 Amendment and Limited Waiver (the 2010 Amendment and Waiver)

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## **Table of Contents**

to the agreements governing our Senior Notes, Second Lien Notes and third Lien Notes, which increased the interest rates on our Notes. Higher paid-in-kind interest and interest accretion of the debt discount and issuance costs related to our Third Lien Notes accounted for \$47.8 million of the increase. Higher paid-in-kind interest on our Second Lien Notes accounted for an additional \$4.0 million increase in interest expense. These increases were partially offset by \$13.5 million in lower interest expense from our Senior Notes due to the lower principal balance of our Senior Notes and lower accretion of the related debt discount and issuance costs as the Notes neared their original maturity in July 2011, as well as \$1.3 million in lower accretion of our Second Lien Notes debt discount and issuance costs as they neared their original maturity in November 2011.

Interest expense on our Senior Notes, Second Lien Notes and Third Lien Notes during 2012 is expected to be lower than that recognized during 2011 by approximately \$69.1 million and is expected to be attributed to lower accretion of debt discounts and issuance costs related to these notes of approximately \$100.9 million, partially offset by higher paid-in-kind interest of approximately \$31.8 million.

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

The 2010 Amendment and Limited Waiver modification to our Third Lien Notes, which increased the interest rate payable on our Third Lien Notes, was determined to have been accomplished with debt instruments that are substantially different, in accordance with generally accepted accounting principles, resulting in an effective extinguishment of the existing Third Lien Notes and a new issue of Third Lien Notes as of the modification date for accounting purposes. The new issue of Third Lien Notes was recorded at its estimated fair value using a discount rate of 40%, and that amount was used to determine net debt extinguishment gain of \$38.0 million. The net gain was determined as the difference between the remaining unamortized discount under the extinguished Third Lien Notes of \$123.1 million and the new discount of \$164.8 million, plus \$9.6 million of embedded derivative liabilities that were eliminated at the date of the extinguishment, partially offset by \$13.3 million in fee notes issued to the Third Lien noteholders.

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

Other income, net, from continuing operations during 2011 was \$1.2 million which represents the changes in the estimated fair values of our embedded derivatives.

Other income, net, from continuing operations during 2010 was \$13.8 million which represents primarily the changes in the estimated fair values of our embedded derivatives of \$12.5 million and cash of \$1.0 million released from escrow during 2010 related to the reorganization of our predecessor company in 2005. Of the \$12.5 million change in the estimated fair values of our embedded derivative liabilities, \$9.6 million of the credit to other income (expense) during 2010 resulted primarily from the 2010 Amendment and Waiver which eliminated the Second Lien Note redemption premiums required upon an asset sale or change in control.

### **Income Taxes**

During 2011 and 2010, substantially all of our U.S. subsidiaries had net losses for tax purposes with full valuation allowances.

Our effective income tax rate during 2011 was 0.8%, resulting in an income tax benefit of \$2.2 million on our pre-tax loss of \$268.1 million. The income tax benefit consists of a \$1.0 million tax benefit on taxes provided on income from discontinued operations that can be offset by losses from continuing operations and a \$1.2 million income tax benefit due to a reduction in tax rate on deferred tax liabilities associated with indefinite-lived intangible assets.

Our effective income tax rate during 2010 was 14.7% resulting in an income tax benefit of \$26.7 million on our pre-tax loss of \$182.1 million. The 2010 income tax benefit includes a \$21.9 million tax benefit recorded as a

**Table of Contents**

result of taxes provided on income from discontinued operations that can be offset by losses from continuing operations and a \$4.8 million income tax benefit due to a reduction in the state tax rate on deferred tax liabilities associated with indefinite-lived intangible assets.

**Comparison of Our Fiscal Year 2011 to Our Fiscal Year 2010 Discontinued Operations**

The results of operations of our discontinued PacketVideo, Semiconductor, Global Services Support, WiMAX Telecom, Inquam and South American businesses, are as follows:

<i>(in millions)</i>	Years Ended		Increase (Decrease)
	December 31, 2011	January 1, 2011	
Revenues (including related party revenues of \$0 and \$11.4, respectively)	\$	\$ 39.7	\$ (39.7)
Total operating expenses (credits) (including related party cost of revenues of \$0 and \$0.7, respectively)	(0.6)	64.9	(65.5)
Net gains on business divestitures	2.3	78.4	(76.1)
Income before income taxes	2.8	52.8	(50.0)
Net income from discontinued operations	1.8	35.0	(33.2)
Net loss attributed to noncontrolling interest in subsidiary		3.8	(3.8)
Net income from discontinued operations attributed to NextWave	1.8	38.8	(37.0)

**Revenues**

Of the \$39.7 million decrease in revenues from discontinued operations during 2011 when compared to 2010, \$38.3 million was attributable to our sale of our PacketVideo subsidiary in October 2010. The remaining \$1.4 million decrease was primarily attributable to the sale of our Slovakia based subsidiary, WiMAX Telecom Slovakia s.r.o. ( WT SRO ) in June of 2010.

Related party revenues during 2010 represent sales and royalties related to versions of PacketVideo's multimedia player sold and licensed to DOCOMO for installation into DOCOMO handset models. During the first nine months of 2010 DOCOMO owned a 35% noncontrolling interest in our PacketVideo subsidiary.

**Total Operating Expenses (Credits)**

Of the \$65.5 million decrease in total operating expenses from discontinued operations during 2011 when compared to 2010, \$48.5 million is attributable to the divestiture of our PacketVideo subsidiary in October 2010, \$13.6 million and \$0.9 million is attributable to asset impairment and restructuring charges, respectively, recognized during 2010 and the remaining \$2.5 million is primarily attributable to our divestitures during 2011 and 2010 of our discontinued Latin American subsidiaries and our WiMAX Telecom businesses in Slovakia and Switzerland. Total operating expense credits during 2011 include a \$0.3 million favorable settlement with a service vendor, \$0.2 million in net gains on the sale of equipment and \$0.2 million in lease revenue.

Included in total operating expenses from discontinued operations during 2011 and 2010 is \$0 and \$2.9 million, respectively, of amortization of purchased intangible assets. Also included in total operating expenses during 2011 and 2010 is \$0 and \$3.3 million, respectively, of share-based compensation expense.

**Net Gains on Business Divestitures**

During 2011, we completed the sale of our remaining subsidiaries in Latin America to a third party for \$3.0 million, recognizing a gain on the divestiture of \$1.7 million, and recognized gains totaling \$0.6 million for cash received during 2011 under the terms of an additional consideration agreement that we entered into upon the sale of WT SRO in June 2010 and the release of escrow funds from the 2010 sale of one of our Latin American businesses.

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## **Table of Contents**

On October 8, 2010, we sold our remaining 65% stock ownership interest in our PacketVideo subsidiary to DOCOMO, a related party (see Note 2) for \$111.6 million and, after deducting direct costs of \$2.1 million, we recognized a gain on the sale of \$84.1 million during 2010.

During 2010 we recognized a \$4.2 million gain on the assumption of debt by the buyers of two of our Latin American wireless spectrum businesses. These gains were partially offset by an \$8.8 million loss on our sale of our WiMAX Telecom subsidiary in Slovakia and a \$1.5 million loss from the deconsolidation of the remaining net assets of our WiMAX Telecom subsidiary in Switzerland that filed for bankruptcy in December 2010.

### **Income Taxes**

The effective income tax rate for discontinued operations during 2011 was 36.5%, resulting in an income tax provision of \$1.0 million on pre-tax income from discontinued operations of \$2.8 million. The tax provision was recorded as a result of an allocation of the current year loss from continuing operations.

The effective income tax rate for discontinued operations during 2010 was 33.7%, resulting in a \$17.8 million income tax provision on pre-tax income from discontinued operations of \$52.8 million, which primarily relates to a \$21.9 million income tax provision recorded as a result of an allocation of the current year loss from continuing operations partially offset by a \$4.5 million income tax benefit from the effect of the reduction of deferred tax liabilities associated with indefinite-lived intangible assets.

### **Net Income Attributed to Noncontrolling Interest in Subsidiary**

During 2010, the net income from discontinued operations attributed to the noncontrolling interest in our PacketVideo subsidiary totaled \$3.8 million and represents DOCOMO's share of PacketVideo's net loss during the year. In October 2010, we sold our remaining 65% stock ownership in our PacketVideo subsidiary.

## **LIQUIDITY AND CAPITAL RESOURCES**

We have funded our operations, business combinations, strategic investments and wireless spectrum license acquisitions primarily with the \$550.0 million in cash received in our initial capitalization in April 2005, the net proceeds of \$295.0 million from the issuance of the Senior Notes in 2006 and 2010, the net proceeds of \$351.1 million from our issuance of Series A Senior Convertible Preferred Stock in March 2007 and the net proceeds of \$101.0 million from our issuance of the Second Lien Notes in 2008 and 2009. Our total unrestricted cash, cash equivalents and marketable securities included in continuing operations totaled \$21.1 million at December 31, 2011. We had a net working capital deficit of \$118.1 million at December 31, 2011.

In an effort to reduce our future working capital requirements and in order to comply with the terms of our Senior Notes, Second Lien Notes and Third Lien Notes, in the second half of 2008, our Board of Directors approved the implementation of a global restructuring initiative, pursuant to which we have divested, either through sale, dissolution or closure, our multimedia, network infrastructure and semiconductor businesses. We have also taken other cost reduction actions. The results of operations of these businesses are reported as discontinued operations in the accompanying condensed consolidated financial statements.

During 2011, our continuing operations used cash of \$15.2 million for operations, which includes costs to maintain our wireless spectrum licenses and costs associated with being a public reporting company. We expect that our cash requirements for our continuing operations will continue at this rate during 2012. We anticipate that additional funding for operations will be needed during the first quarter of 2013, and there can be no assurance at this time that we will obtain this additional funding.

In 2010 and 2011, we had capital expenditure needs associated with certain build-out or substantial service requirements which apply to our licensed domestic wireless spectrum, which generally must be satisfied as a condition of the license. The substantial service deadlines applicable to our domestic wireless spectrum assets, and our activities to meet these requirements, are described below:

The substantial service deadline for our domestic Wireless Communication Services ( WCS ) spectrum was July 21, 2010 under the Federal Communications Commission ( FCC ) rules effective at



**Table of Contents**

that time. However, the FCC adopted new rules on May 20, 2010, that, when they became effective on September 1, 2010, purported to replace the July 21, 2010 substantial service requirement with new requirements that must be met by March 4, 2014 and additional requirements that must be met by September 1, 2016. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC dismissed them on June 14, 2011 in accordance with its June 2010 announcement that all substantial service showings would be dismissed given the new performance requirements it had adopted. Failure to make the substantial service demonstrations by March 4, 2014 and by September 1, 2016 without seeking and obtaining an extension from the FCC would result in license forfeiture.

Educational Broadband Service ( EBS ) licensees were required to demonstrate that they are providing substantial service in their license areas by November 1, 2011. To meet the substantial service requirements for EBS spectrum, we arranged with our EBS licensees to either (a) have the EBS licensee continue to use the spectrum to provide educational services in the cases where the EBS licensee is currently providing such service or (b) provide educational services on a network that was installed by us, at our cost, either of which option is intended to deliver educational services over the spectrum in compliance with the FCC's educational safe harbor to meet the substantial service showing by the deadline. We have completed build-out activities for our EBS leases. All of the EBS licensees with whom we have leases have filed substantial service showings, which the FCC has accepted.

We also operate or hold spectrum licenses through various subsidiaries in Canada and Norway. In Canada, our 2.3 GHz licenses are subject to mid-term in-use demonstration requirements by November 2012 and April 2013 for 63 and 24 of our licenses, respectively. In order for us to operate our Canadian spectrum under Canadian ownership rules, we will need a Canadian-controlled partner. There can be no assurance that we will find a Canadian-controlled partner who will be able to provide a viable business plan and attract appropriate financing by the build out deadline. Failure to make the in-use demonstrations for each of these licenses in the absence of an extension by Industry Canada, could result in forfeiture of the applicable licenses. At December 31, 2011, we held a total of 88 licenses in Canada, one of which was sold in February 2012. We do not have specific build-out obligations in Norway.

***Debt Maturities, Forbearance Agreement and Ability to Continue as Going Concern***

As of December 31, 2011, the aggregate principal amount of our secured indebtedness was \$1,022 million. This amount includes our Senior Notes with an aggregate principal amount of \$137.8 million, our Second Lien Notes with an amount of \$193.3 million and our Third Lien Notes with an aggregate principal amount of \$690.9 million. On December 14, 2011, we entered into the 2011 Amendment and Waiver to the agreements governing our Notes, under which the maturity of our First Lien Notes was extended to December 31, 2012, the maturity of our Second Lien Notes was extended to January 31, 2013, the maturity of our Third Lien Notes was extended to February 28, 2013 and past events of default were permanently waived. No amendment or consent fee was paid to the Holders in connection with the 2011 Amendment and Waiver. Our current cash reserves are not sufficient to meet our payment obligations under our secured notes at their current maturity dates. Additionally, we may not be able to consummate sales of our wireless spectrum assets yielding sufficient proceeds to retire this indebtedness at the current scheduled maturity dates. If we are unable to further extend the maturity of our secured notes, or identify and successfully implement alternative financing to repay our secured notes, the holders of our Notes could proceed against the assets pledged to collateralize these obligations. These conditions raise substantial doubt about our ability to continue as a going concern. Insufficient capital to repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing in the United States Bankruptcy Court. Any alternative financing and/or maturity extension of our Notes may be costly to obtain, and could involve the issuance of equity securities that could cause significant dilution to our existing stockholders and potentially limit our net operating loss carry forwards.



**Table of Contents**

The accompanying financial statements have been prepared assuming the Company will continue as a going concern and do not include any adjustments that might result from the outcome of this uncertainty. This basis contemplates the recovery of the Company's assets and the satisfaction of liabilities in the normal course of business.

The following table presents our working capital deficit, our cash, cash equivalents and marketable securities balances:

<i>(in millions)</i>	<b>December 31, 2011</b>	<b>January 1, 2011</b>	<b>Increase (Decrease)</b>
Working capital deficit	\$ (118.1)	\$ (733.7)	\$ (615.6)
Cash and cash equivalents	\$ 11.1	\$ 42.5	\$ (31.4)
Marketable securities	10.0		10.0
Cash, cash equivalents and marketable securities - continuing operations	21.1	42.5	(21.4)
Cash and cash equivalents - discontinued operations		0.1	(0.1)
Total cash, cash equivalents and marketable securities	\$ 21.1	\$ 42.6	\$ (21.5)

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

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

<i>(in millions)</i>	<b>Years Ended</b>	
	<b>December 31, 2011</b>	<b>January 1, 2011</b>
Beginning cash, cash equivalents and marketable securities	\$ 42.6	\$ 20.5
Net operating cash used by continuing operations	(15.2)	(21.5)
Proceeds from the sale of wireless spectrum licenses, net of selling costs	1.0	12.9
Payments on long-term obligations, excluding wireless spectrum lease obligations	(6.1)	(119.9)
Cash paid for wireless spectrum license lease obligations	(4.2)	(4.3)
Proceeds from long-term obligations		25.0
Proceeds from the sale of auction-rate securities		24.0
Payments for the purchase of property and equipment		(2.6)
Other, net	(0.9)	(0.5)
Net operating cash provided (used) by discontinued operations	0.1	(1.7)
Net cash from the sale of equity interests and assets - discontinued operations	3.8	111.8
Payments for the purchase of property and equipment - discontinued operations		(1.1)
Ending cash, cash equivalents and marketable securities	21.1	42.6
Less: ending cash and cash equivalents - discontinued operations		(0.1)
Ending cash, cash equivalents and marketable securities - continuing operations	\$ 21.1	\$ 42.5

Other than the 2011 Amendment and Waiver to our Senior Notes, our Second Lien Notes and our Third Lien Notes, as discussed above, which extended the maturity of all of our notes and waived past events of default, there were no other significant investing or financing activities from continuing operations during 2011.

**CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

## Edgar Filing: NextWave Wireless Inc. - Form 10-K

Our discussion and analysis of our results of operations and liquidity and capital resources are based on our consolidated financial statements which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and

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**Table of Contents**

judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates and judgments, including those related to revenue recognition, valuation of intangible assets and investments, and litigation. We base our estimates on historical and anticipated results and trends and on various other assumptions that we believe are reasonable under the circumstances, including assumptions as to future events. These estimates form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. By their nature, estimates are subject to an inherent degree of uncertainty. Actual results that differ from our estimates could have a significant adverse effect on our operating results and financial position. Our accounting policies are described in more detail in Note 1 to our consolidated financial statements included elsewhere in this Annual Report. We believe that the following significant accounting policies and assumptions may involve a higher degree of judgment and complexity than others.

***Wireless Spectrum Licenses***

We capitalize as intangible assets wireless spectrum licenses that we acquire from third parties or through government auctions. For wireless spectrum licenses purchased directly from third parties or through spectrum auctions, the cost basis of the wireless spectrum asset includes the purchase price paid for the license at the time of acquisition plus legal costs incurred to acquire the license. For wireless spectrum licenses acquired through a business combination or through the acquisition of a business where the assets of the business are comprised almost entirely of wireless spectrum, the cost basis of the wireless spectrum asset is determined through an allocation of the total purchase price to the tangible and identifiable intangible assets and liabilities of the acquired business or asset(s) and includes any deferred tax liabilities determined in accordance with accounting provisions for acquired temporary differences in certain purchase transactions that are not accounted for as business combinations. For leased wireless spectrum rights, the asset and related liability are recorded at the net present value of future cash outflows using our incremental borrowing rate at the time of acquisition. For individual wireless spectrum licenses acquired as group in a single transaction we allocate cost to the individual licenses based on their relative value.

We have determined that certain of our wireless spectrum licenses meet the definition of indefinite-lived intangible assets because the licenses are either perpetual or may be renewed periodically for a nominal fee, provided that we continue to meet the service and geographic coverage provisions. We have also determined that there are currently no legal, regulatory, contractual, competitive, economic or other factors that limit the useful lives of these wireless spectrum licenses. As of December 31, 2011, indefinite-lived wireless spectrum licenses that are not held for sale and that are not subject to amortization totaled \$381.4 million.

Wireless spectrum licenses for which we have acquired lease rights from third parties are considered to have finite lives. The wireless license asset is then amortized over the contractual life of the lease. We amortize these assets on a straight-line basis over the initial license period. Amortization expense on wireless spectrum licenses is charged to general and administrative expense. As of December 31, 2011, amortized wireless spectrum licenses, net of accumulated amortization, that are not held for sale totaled \$54.2 million.

During 2011, our wireless spectrum licenses, net, decreased by \$8.8 million, which was primarily due to the sale of AWS spectrum licenses in the United States with a cost basis of \$0.7 million, amortization expense of \$7.6 million, and the effect of fluctuations in exchange rates of \$0.9 million, partially offset by an addition of \$0.4 million resulting from the extension of one of our existing leases.

***Valuation of Indefinite-Lived Intangible Assets***

We perform an annual review for impairment of amortization of our indefinite-lived intangible assets, or more frequently if impairment indicators arise. Indefinite-lived intangible assets are considered to be impaired if we determine that the carrying value of the asset exceeds its fair value.

## **Table of Contents**

We test indefinite-lived intangible assets for impairment annually on the first day of our fiscal fourth quarter by making a determination of the fair value of the intangible asset. If the fair value of the intangible asset is less than its carrying value, an impairment loss is recognized in an amount equal to the difference. We also evaluate the remaining useful life of our intangible assets that are not subject to amortization on an annual basis to determine whether events and circumstances continue to support an indefinite useful life. If an intangible asset that is not being amortized is subsequently determined to have a finite useful life, that asset is tested for impairment. After recognition of the impairment, if any, the asset is amortized prospectively over its estimated remaining useful life and accounted for in the same manner as other intangible assets that are subject to amortization.

We determined the fair value of our wireless spectrum licenses utilizing both a market approach and an income approach. Under the market approach, we determined fair value through an analysis of sales and offerings of comparable assets, including recent sales of our AWS licenses and FCC auctions of similar wireless spectrum. Sales and offering prices for the comparable assets are adjusted to reflect differences between our wireless spectrum licenses and the comparable assets, such as location, time and terms of sale, use and utility, trends in technology and consumer demand, and regulatory issues, that may potentially affect the value of our wireless spectrum.

Under the income approach, we determine the fair value of spectrum using the Greenfield Approach which is a discounted cash flow model that assumes the only asset owned by us at the date of the valuation is the license itself. This valuation analysis attempts to determine what cash flow contributions might ensue after accounting for start-up and capital investments and applying certain performance expectations. We utilized a 10-year discrete period to isolate cash flows attributable to the licenses including modeling the hypothetical build out of a nationwide network. Assumptions key in estimating fair value under this method include, but are not limited to, revenue and subscriber growth rates, operating expenditures, capital expenditures and timing of build out, market share achieved, terminal value growth rate, tax rates and discount rate. The assumptions which underlie the development of the network, subscriber base and other critical inputs of the discounted cash flow model were based on a combination of average marketplace participant data and our historical results and business plans. The discount rate used in the model represents a weighted average cost of capital taking into account the cost of debt and equity financing weighted by the percentage of debt and equity in a target capital structure and the perceived risk associated with an intangible asset such as our spectrum licenses. The terminal value growth rate represents our estimate of the marketplace's long term growth rate. If we increase the discount rate 100 basis points and decrease the terminal growth rate 300 basis points, the fair values of the licenses, while less than currently projected, would still be higher than their current book values. However, if there is a substantial adverse decline in the operating profitability of the wireless service industry, we could have material impairment charges in future years which could adversely affect our results of operations and financial condition.

Of our indefinite-lived wireless spectrum licenses at December 31, 2011, \$330.1 million represents the carrying value of domestic WCS spectrum licenses. Since 1997, the FCC has considered a proposal to permanently authorize terrestrial repeaters for Satellite Digital Audio Radio Services ( SDARS ) operations adjacent to the C and D blocks of the WCS band. The FCC has permitted a large number of these SDARS terrestrial repeaters to operate on a special temporary authorization since 2001. Permanently authorizing SDARS repeaters adjacent to the WCS band could cause interference to WCS, BRS and EBS receivers. The extent of the interference from SDARS repeaters is unclear and will depend on the effectiveness of the new rules adopted by the FCC in 2010 (as further described below) and the operation of SDARS equipment under the new rules. Because WCS C and D block licenses are adjacent to the SDARS spectrum, the potential for interference to this spectrum is of greatest concern. There is a lesser magnitude concern regarding interference from SDARS to WCS A and B block licenses, and BRS and EBS licenses. The FCC adopted new technical rules in 2010 to govern WCS and SDARS operations. These rules became effective in September 2010. Operation of both WCS and SDARS equipment under the new rules could result in interference to our WCS, BRS or EBS spectrum, which could impair our ability to realize value from this spectrum.

## **Table of Contents**

### ***Impairment of Long-Lived Assets***

We review long-lived assets to be held and used, including acquired intangible assets subject to amortization and property and equipment, for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be fully recoverable. Conditions that would necessitate an impairment assessment include a significant decline in the market price of an asset or asset group, a significant adverse change in the extent or manner in which an asset or asset group is being used, the loss of legal ownership or title to the asset, significant negative industry or economic trends or the presence of other indicators that would indicate that the carrying amount of an asset or asset group is not recoverable.

A long-lived asset is considered to be impaired if the estimated undiscounted future cash flows resulting from the use of the asset and its eventual disposition are not sufficient to recover the carrying value of the asset.

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

### ***Fair Value Measurements***

We determine the fair value measurements of applicable assets and liabilities based on a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted market prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. The following summarizes the assets and liabilities that we measure at fair value on a recurring basis and the assets and liabilities that we measured at fair value on a nonrecurring basis during the period and their respective input levels based on the fair value hierarchy.

**Wireless Spectrum Licenses.** We estimated the fair value of our AWS spectrum licenses held for sale based on advanced negotiations with third parties for the purchase of the licenses (Level 2 Inputs). Through our continued efforts to sell our wireless spectrum licenses in Europe and Latin America, we determined that the carrying value of these spectrum licenses exceeded their fair value. We estimated the fair value of these wireless spectrum licenses based on advanced negotiations and submitted bids from third parties for the purchase of the licenses (Level 2 Inputs). Accordingly, during 2010, we wrote-down the carrying value of our wireless spectrum licenses in Europe and Argentina to their estimated fair value and recognized asset impairment charges of \$13.8 million, of which \$1.7 million was reclassified to the loss on business divestitures reported in discontinued operations.

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

**Embedded Derivatives.** Our obligation to redeem the Senior Notes, Second Lien Notes and Third Lien Notes upon an asset sale and a change in control of the Company and, prior to the 2011 Amendment and Waiver, the automatic extension of the maturity date of our Senior Notes from July 17, 2011 to October 17, 2011 if

**Table of Contents**

certain conditions were met, constitute embedded derivatives under derivatives and hedging accounting guidance. Accordingly, the initial estimated fair values of the embedded derivatives were recorded as a reduction in the carrying values of the Senior Notes, Second Lien Notes and Third Lien Notes. The estimated fair value, if any, of our embedded derivatives are reported in other current liabilities in the accompanying consolidated balance sheets and subsequent changes in the fair value of our embedded derivatives are recognized in other operating income (expense) in the accompanying consolidated statements of operations. We measured the estimated fair value of the embedded derivatives in the Senior Notes, Second Lien Notes and Third Lien Notes using probability-weighted discounted cash flow models (Level 3 inputs). The discounted cash flow models utilize management assumptions of the probability of the occurrence of an extension of the maturity date of our Senior Notes and an early redemption of the Second Lien Notes and Third Lien Notes upon an asset sale and a change in control of the Company. These assumptions are subjective and are based on management's estimate of future events based on current facts and circumstances. A hypothetical five percent decrease in management assumptions would not have a material impact on the value of the embedded derivatives.

At December 31, 2011, our embedded derivatives were estimated to have no fair value using the Level 3 inputs described above, whereby the probability of redemption prior to the maturity date was considered nil.

At January 1, 2011, our embedded derivatives were estimated to have fair values aggregating \$1.3 million using the Level 3 inputs described above. The reduction in the fair value of our embedded derivative liabilities from \$19.5 million at January 2, 2010 to \$1.3 million at January 1, 2011, resulted primarily from the 2010 Amendment and Waiver which eliminated the redemption premiums payable upon an asset sale or change in control and resulted in a \$9.6 million credit to other income (expense) during the year ended January 1, 2011. The reduction in the fair values of the embedded derivatives associated with our Third Lien notes accounted for an additional reduction in our embedded derivative liabilities of \$9.1 million and resulted primarily from a lower probability at January 1, 2011, of redemption prior to the maturity date.

Long-Term Obligations. At December 31, 2011 and January 1, 2011 we determined the fair value of our long-term obligations using discounted cash flow models with discount rates that represent our respective estimated incremental borrowing rates as of that date for that type of instrument. At January 1, 2011, our Third Lien Notes were measured using their fair value for accounting purposes upon reissuance in March 2010.

***Accounting for Troubled Debt Restructurings***

Upon our debt modifications in December 2011 and March 2010, we first reviewed the modifications to determine if the changes constituted a troubled debt restructuring. A restructuring of a debt constitutes a troubled debt restructuring if the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider. A creditor is deemed to have granted a concession if the debtor's effective borrowing rate on the restructured debt, after giving effect to all the terms of the restructured debt, including any new or revised sweeteners such as the Fee Notes and Senior Incremental Notes issued in March 2010, is less than the effective borrowing rate of the old debt immediately before the modification.

To determine if the noteholders granted us a concession as a result of the 2011 Amendment and Waiver, we determined the effective interest rate of the old debt immediately before the restructuring by using the respective stated interest rates in effect prior to the 2011 Amendment and Waiver plus the respective effective interest rates used for amortization of discounts and issue costs. We then determined the respective total cash flows under the new terms of each note and solved for the discount rate that equated these cash flows to the respective carrying values of the old debt at December 14, 2011. We determined that the respective effective rates on the new restructured notes were less than that of the old notes, and, therefore, concluded that a concession was considered to have been granted to us and that troubled debt accounting provisions were applicable.

## **Table of Contents**

As a result, the carrying amounts of our Senior Notes, Second Lien Notes and Third Lien Notes remained unchanged at December 14, 2011 and the maturity extensions pursuant to the 2011 Amendment and Waiver have been accounted for on a prospective basis beginning December 14, 2011. The new effective interest rates of 14.5%, 14.7% and 15.8% for the Senior Notes, Second Lien Notes and Third Lien Notes, respectively, were determined as the discount rate that equated the present value of the future cash payments specified by the new terms with the December 14, 2011 carrying amount of the respective notes.

All direct costs incurred to effect the 2011 Amendment and Waiver maturity extension were expensed during 2011.

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

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

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

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

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

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**Table of Contents**

We determined that the March 16, 2010 modification of our Third Lien Notes was accomplished with debt instruments that were substantially different and, therefore, concluded that debt extinguishment accounting treatment should be applied. The new issue of Third Lien Notes was recorded at its estimated fair value using a discount rate of 40%, which represents the estimated incremental borrowing rate of our Third Lien Notes that was determined with the assistance of a third party valuation group, and that amount was used to determine a net debt extinguishment gain of \$38.0 million that was recognized during 2010 in other income in the accompanying consolidated statements of operations. The net gain of \$38.0 million was determined as the difference between the remaining unamortized discount under the extinguished Third Lien Notes of \$123.1 million and the new discount of \$164.8 million, plus \$9.6 million of embedded derivative liabilities that were eliminated at the date of the extinguishment, partially offset by \$13.3 million in Fee Notes issued to the Third Lien noteholders. The new discount of \$164.8 million is amortized using the effective interest rate method over the remaining term of the Third Lien Notes due December 2011 which will significantly increase our interest expense. The estimated fair value and related gain on extinguishment is sensitive to fluctuations in our incremental borrowing rate. For instance, a 5% decrease in the estimated incremental borrowing rate of our Third Lien Notes would have reduced the gain on extinguishment of debt and reduced our future interest expense by \$25.8 million.

***Legal Proceedings***

On September 16, 2008, a putative class action lawsuit, captioned *Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants*, was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys' fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned *Benjamin et al. v. NextWave Wireless Inc. et al.* was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint, and we subsequently filed a Motion to Dismiss. On March 16, 2011, the Court granted our Motion and dismissed the complaint without prejudice. On May 5, 2011, the lead plaintiff filed a Third Amended Complaint, and we again filed a Motion to Dismiss. On November 21, 2011, the Court granted our Motion and dismissed the case with prejudice. On December 19, 2011, the lead plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeals. The lead plaintiff's initial brief is due on March 28, 2012 and our response will be due on April 27, 2012. We have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time.

We are also currently involved in other legal proceedings in the ordinary course of our business operations. We estimate the range of liability related to pending litigation where the amount and range of loss can be estimated. We record our best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, we record the minimum estimated liability related to the claim. As additional information becomes available, we assess the potential liability related to our pending litigation and revise our estimates. As of December 31, 2011, we have not recorded any significant accruals for contingent liabilities associated with our legal proceedings based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time. Revisions to our estimate of the potential liability could materially impact future results of operations.



**Table of Contents****Income Taxes**

We apply a recognition threshold and measurement standard for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. We also determine whether the benefits of our tax positions are more likely than not of being sustained upon audit based on the technical merits of the tax position. We did not have any unrecognized tax benefits or related accrued interest or penalties as of December 31, 2011 or January 1, 2011.

We recognize a deferred tax asset or liability whenever there are future tax effects from temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to the years in which those differences are expected to be recovered or settled. In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent financial operations. When considered necessary, we record a valuation allowance to reduce the carrying amount of deferred tax assets if it is more likely than not all or a portion of the asset will not be realized.

**CONTRACTUAL OBLIGATIONS**

The following table summarizes our cash contractual obligations for continuing and discontinued operations at December 31, 2011, and the effect that such obligations are expected to have on our liquidity and cash flows in future periods.

<i>(in thousands)</i>	<b>Total</b>	<b>Payments Due by Fiscal Year Period</b>			<b>Years 2017 and Thereafter</b>
		<b>2012</b>	<b>Years 2013-2014</b>	<b>Years 2015-2016</b>	
<b>Continuing Operations:</b>					
Long-term obligations:					
Notes payable <sup>(1)</sup>	\$ 1,022,006	\$ 137,795	\$ 884,211	\$	\$
Wireless spectrum leases <sup>(2)</sup>	35,666	4,224	8,736	7,515	15,191
Minimum royalty payments on wireless spectrum lease arrangements	8,499	418	1,376	2,096	4,609
Operating leases	172	164	8		
	1,066,343	142,601	894,331	9,611	19,800
Discontinued Operations Services agreement	2,344				2,344
<b>Total</b>	<b>\$ 1,068,687</b>	<b>\$ 142,601</b>	<b>\$ 894,331</b>	<b>\$ 9,611</b>	<b>\$ 22,144</b>

(1) Amounts presented do not include the future issuance of additional Senior Notes, Second Lien Notes and Third Lien Notes in payment of interest.

(2) Amounts presented do not include adjustments for future changes in the consumer price index.

**Table of Contents**

**Item 8. Financial Statements and Exhibits**

Index to Consolidated Financial Statements

	<b>Page</b>
<b>Consolidated Financial Statements</b>	
<u>Report of Independent Registered Public Accounting Firm</u>	39
<u>Consolidated Balance Sheets as of December 31, 2011 and January 1, 2011</u>	40
<u>Consolidated Statements of Operations and Other Comprehensive Loss for each of the Two Fiscal Years Ended December 31, 2011</u>	41
<u>Consolidated Statements of Changes in Stockholders' Deficit for each of the Two Fiscal Years Ended December 31, 2011</u>	42
<u>Consolidated Statements of Cash Flows for each of the Two Fiscal Years Ended December 31, 2011</u>	43
<u>Notes to Consolidated Financial Statements</u>	44

**Table of Contents**

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders of

NextWave Wireless Inc.

We have audited the accompanying consolidated balance sheets of NextWave Wireless Inc. as of December 31, 2011 and January 1, 2011, and the related consolidated statements of operations and other comprehensive loss, changes in stockholders' deficit and cash flows for each of the two fiscal years in the period ended December 31, 2011. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of NextWave Wireless Inc. at December 31, 2011 and January 1, 2011, and the consolidated results of its operations and its cash flows for each of the two fiscal years in the period ended December 31, 2011, in conformity with U.S. generally accepted accounting principles.

As more fully described in Note 1 to the financial statements, the Company has incurred recurring operating losses and has a working capital deficiency, primarily comprised of the current portion of long term obligations of \$142.0 million at December 31, 2011 that is associated with the maturity dates of its debt. The Company currently does not have the ability to repay this debt at maturity. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters also are described in Note 1. The December 31, 2011 financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

/s/ Ernst & Young LLP

San Diego, California

March 12, 2012

**Table of Contents****PART I. FINANCIAL INFORMATION****Item 1. Financial Statements****NEXTWAVE WIRELESS INC.****CONSOLIDATED BALANCE SHEETS****(in thousands, except par value data)**

	December 31, 2011	January 1, 2011
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 11,087	\$ 42,528
Restricted cash	1,047	20
Marketable securities	10,000	
Wireless spectrum licenses held for sale		6,535
Deferred financing costs, net		3,262
Prepaid expenses and other current assets	827	1,092
Current assets of discontinued operations	3,511	3,632
Total current assets	26,472	57,069
Wireless spectrum licenses, net	435,522	437,781
Property and equipment, net	1,313	2,188
Other assets	362	115
Total assets	\$ 463,669	\$ 497,153
<b>LIABILITIES AND STOCKHOLDERS DEFICIT</b>		
Current liabilities:		
Accounts payable	\$ 5	\$ 947
Accrued expenses	2,328	3,427
Current portion of long-term obligations	142,019	784,649
Other current liabilities	10	1,272
Current liabilities of discontinued operations	172	515
Total current liabilities	144,534	790,810
Deferred income tax liabilities	83,334	84,688
Long-term obligations, net of current portion	896,568	19,821
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock, \$0.001 par value; 25,000 shares authorized; 355 shares designated as Series A Senior Convertible Preferred Stock; no other shares issued or outstanding		
Common stock, \$0.007 par value; 57,143 shares authorized; 24,938 and 23,729 shares issued at December 31, 2011 and January 1, 2011, respectively; 24,938 and 23,510 shares outstanding at December 31, 2011 and January 1, 2011	175	166
Additional paid-in-capital	888,505	887,676
Accumulated other comprehensive income	21,805	21,116
Accumulated deficit	(1,571,252)	(1,307,124)
Total stockholders' deficit	(660,767)	(398,166)

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Total liabilities and stockholders' deficit	\$ 463,669	\$ 497,153
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The accompanying notes are an integral part of these consolidated financial statements.

**Table of Contents****NEXTWAVE WIRELESS INC.****CONSOLIDATED STATEMENTS OF OPERATIONS AND OTHER COMPREHENSIVE LOSS****(in thousands, except per share data)**

	Years Ended	
	December 31, 2011	January 1, 2011
Operating expenses:		
General and administrative	\$ 22,497	\$ 28,768
Restructuring credits	(1,076)	(581)
Total operating expenses	21,421	28,187
Net gains on sales of wireless spectrum licenses	330	5,536
Loss from operations	(21,091)	(22,651)
Other income (expense):		
Interest income	59	573
Interest expense	(248,317)	(211,880)
Gain on extinguishment of debt		37,988
Other income	1,249	13,827
Total other expense, net	(247,009)	(159,492)
Loss from continuing operations before income taxes	(268,100)	(182,143)
Income tax benefit	2,199	26,737
Net loss from continuing operations	(265,901)	(155,406)
Income from discontinued operations before income taxes, net of gains on divestitures of discontinued operations of \$2,257 and \$78,360, respectively	2,792	52,832
Income tax provision	(1,019)	(17,824)
Net income from discontinued operations	1,773	35,008
Net loss attributed to noncontrolling interest in subsidiary		3,794
Net income from discontinued operations attributed to NextWave	1,773	38,802
Net loss attributed to NextWave	\$ (264,128)	\$ (116,604)
Other comprehensive loss:		
Net loss	\$ (264,128)	\$ (120,398)
Foreign currency translation adjustment	689	6,339
Total other comprehensive loss	(263,439)	(114,059)
Comprehensive loss attributable to noncontrolling interest in subsidiary		4,134
Other comprehensive loss attributed to NextWave	\$ (263,439)	\$ (109,925)

Amounts attributed to NextWave common shares:

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Net loss from continuing operations	\$ (265,901)	\$ (155,406)
Net income from discontinued operations	1,773	38,802
Net loss attributed to NextWave common shares	\$ (264,128)	\$ (116,604)
Net income (loss) per share attributed to NextWave common shares basic and diluted		
Continuing operations	\$ (11.05)	\$ (6.41)
Discontinued operations	0.07	1.60
Net loss	\$ (10.98)	\$ (4.81)
Weighted-average shares used in per share calculation	24,060	24,267

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

Table of Contents

## NEXTWAVE WIRELESS INC.

## CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS DEFICIT

(in thousands)

<i>(in thousands)</i>	Common Stock		Attributed to NextWave Stockholders			Stockholders Deficit	Noncontrolling Interest in Subsidiary	Total Stockholders Deficit
	Shares	Amount	Additional Paid-in Capital	Other Comprehensive Income	Accumulated Deficit			
<b>Balance, January 2, 2010</b>	22,434	\$ 157	\$ 884,321	\$ 14,437	\$ (1,190,520)	\$ (291,605)	\$ 15,948	\$ (275,657)
Shares issued under stock incentive plans	1,295	9	132			141		141
Share-based compensation			3,223			3,223	1,139	4,362
Sale of remaining interest in PacketVideo							(12,953)	(12,953)
Foreign currency translation adjustment transferred to earnings upon divestiture of foreign entity				4,605		4,605		4,605
Foreign currency translation adjustment				2,074		2,074	(340)	1,734
Net loss					(116,604)	(116,604)	(3,794)	(120,398)
<b>Balance, January 1, 2011</b>	23,729	166	887,676	21,116	(1,307,124)	(398,166)		(398,166)
Shares issued for warrants exercised	1,428	10	90			100		100
Share-based compensation			738			738		738
Retirement of treasury shares	(219)	(1)	1					
Foreign currency translation adjustment transferred to earnings upon divestiture of foreign entity				1,305		1,305		1,305
Foreign currency translation adjustment				(616)		(616)		(616)
Net loss					(264,128)	(264,128)		(264,128)
<b>Balance, December 31, 2011</b>	24,938	\$ 175	\$ 888,505	\$ 21,805	\$ (1,571,252)	\$ (660,767)	\$	\$ (660,767)

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



**Table of Contents****NEXTWAVE WIRELESS INC.****CONSOLIDATED STATEMENTS OF CASH FLOWS**

(in thousands)

	Years Ended	
	December 31, 2011	January 1, 2011
<b>OPERATING ACTIVITIES</b>		
Net loss	\$ (264,128)	\$ (120,398)
Net income from discontinued operations	1,773	35,008
Net loss from continuing operations	(265,901)	(155,406)
Adjustments to reconcile loss from continuing operations to net cash used in operating activities of continuing operations:		
Amortization of intangible assets	7,567	7,716
Depreciation	875	534
Non-cash share-based compensation	738	1,078
Paid-in-kind interest	136,861	109,536
Amortization of deferred financing costs and discounts	111,468	102,054
Gain on extinguishment of debt		(37,988)
Gain on sales of wireless spectrum licenses	(330)	(5,536)
Gains from changes in estimated fair values of embedded derivatives	(1,261)	(12,537)
Deferred income tax benefit	(2,199)	(26,737)
Other non-cash adjustments	(1,042)	1,320
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	275	(107)
Other assets	(279)	(11)
Accounts payable and accrued liabilities	(2,041)	(5,280)
Other liabilities and deferred credits	78	(99)
Net cash used in operating activities of continuing operations	(15,191)	(21,463)
<b>INVESTING ACTIVITIES</b>		
Purchase of held-to-maturity marketable securities	(15,000)	
Proceeds from the maturity of marketable securities	5,000	
Proceeds from the sale of wireless spectrum licenses, net of selling costs	1,041	12,880
Proceeds from the sale of auction-rate securities		24,023
Payments for the purchase of property and equipment		(2,625)
Net cash provided (used) by investing activities of continuing operations	(8,959)	34,278
<b>FINANCING ACTIVITIES</b>		
Payments on long-term obligations	(10,281)	(124,138)
Payments to restricted cash account used to redeem long-term obligations	(1,026)	
Proceeds from long-term obligations		25,000
Proceeds from the sale of common shares	100	141
Net cash used in financing activities of continuing operations	(11,207)	(98,997)
Cash provided (used) by discontinued operations:		
Net cash provided (used) by operating activities of discontinued operations	119	(1,694)
Net cash provided by investing activities of discontinued operations	3,809	110,666

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Net cash provided by discontinued operations	3,928	108,972
Effect of foreign currency exchange rate changes on cash	(77)	(704)
Net increase (decrease) in cash and cash equivalents	(31,506)	22,086
Cash and cash equivalents, beginning of period	42,598	20,512
Cash and cash equivalents, end of period	11,092	42,598
Less cash and cash equivalents of discontinued operations, end of period	(5)	(70)
Cash and cash equivalents of continuing operations, end of period	\$ 11,087	\$ 42,528

**SUPPLEMENTAL CASH FLOW INFORMATION**

Cash paid for interest	\$ 3	\$ 2,454
Cash paid for taxes	\$ 3	\$ 48
Noncash financing activity:		
Senior, Second and Third Lien Notes issued to noteholders in exchange for debt modification fees	\$	\$ 21,249

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

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**Table of Contents**

**NEXTWAVE WIRELESS INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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

***Financial Statement Preparation***

NextWave Wireless Inc. (together with its subsidiaries, NextWave, we, our or us) is a holding company for a significant wireless spectrum portfolio. As a result of our global restructuring initiative initiated in 2008, our continuing operations are focused on the management of our wireless spectrum interests.

***Basis of Presentation and Liquidity***

The accompanying consolidated financial statements have been prepared assuming that we will continue as a going concern. This basis of accounting contemplates the recovery of our assets and the satisfaction of our liabilities in the normal course of business. We generated net losses attributable to NextWave of \$264.1 million and \$116.6 million for the years ended December 31, 2011 and January 1, 2011, respectively, and have an accumulated deficit of \$1,571 million at December 31, 2011. Our net loss from continuing operations of \$155.4 million for the year ended January 1, 2011 includes a \$38.0 million noncash gain on extinguishment of debt resulting from the debt modification of our Third Lien Subordinated Secured Convertible Notes due 2013 (the Third Lien Notes) in March 2010, as described below, which was treated as an extinguishment of debt for accounting purposes. Without this gain, we would have reported a loss from continuing operations of \$193.4 million for the year ended January 1, 2011. We used cash from operating activities of our continuing operations of \$15.2 million and \$21.5 million during the years ended December 31, 2011 and January 1, 2011, respectively. Our unrestricted cash and cash equivalents and marketable securities included in current assets of continuing operations at December 31, 2011 totaled \$21.1 million. We had a net working capital deficit of \$118.1 million at December 31, 2011.

On December 14, 2011, we entered into an Amendment and Limited Waiver (the 2011 Amendment and Waiver) to our Senior Secured Notes (the Senior Notes), our Senior Subordinated Secured Second Lien Notes (the Second Lien Notes) and our Third Lien Notes, whereby all holders of our Senior Notes, Second Lien Notes and Third Lien Notes agreed to extend the maturity of the Senior Notes to December 31, 2012; extend the maturity of the Second Lien Notes to January 31, 2013; extend the maturity of the Third Lien Notes to February 28, 2013; and permanently waive past events of default under the Notes. No amendment or consent fee was paid to the Holders in connection with the 2011 Amendment and Waiver.

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

As of December 31, 2011, the aggregate principal amount of our secured indebtedness was \$1,022 million. This amount includes our Senior Notes with an aggregate principal amount of \$137.8 million, our Second Lien Notes with an aggregate principal amount of \$193.3 million and our Third Lien Notes with an aggregate principal amount of \$690.9 million. Our current cash reserves are not sufficient to meet our payment obligations under our secured notes at their current maturity dates. Additionally, we may not be able to consummate sales of our wireless spectrum assets yielding sufficient proceeds to retire this indebtedness at the current scheduled maturity dates. If we are unable to further extend the maturity of our secured notes, or identify and successfully implement alternative financing to repay our secured notes, the holders of our Notes could proceed against the assets pledged to collateralize these obligations. These conditions raise substantial doubt about our ability to

## **Table of Contents**

continue as a going concern. Insufficient capital to repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing in the United States Bankruptcy Court. Any alternative financing and/or maturity extension of our Notes may be costly to obtain, and could involve the issuance of equity securities that could cause significant dilution to our existing stockholders and potentially limit our net operating loss carry forwards.

In 2010 and 2011, we had capital expenditure needs associated with certain build-out or substantial service requirements which apply to our domestic licensed wireless spectrum, which generally must be satisfied as a condition of the license. The substantial service deadlines applicable to our domestic wireless spectrum assets, and our activities to meet these requirements, are described below:

The substantial service deadline for our domestic Wireless Communication Services ( WCS ) spectrum was July 21, 2010 under the Federal Communications Commission ( FCC ) rules effective at that time. However, the FCC adopted new rules on May 20, 2010, that, when they became effective on September 1, 2010, purported to replace the July 21, 2010 substantial service requirement with new requirements that must be met by March 4, 2014 and additional requirements that must be met by September 1, 2016. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC dismissed them on June 14, 2011 in accordance with its June 2010 announcement that all substantial service showings would be dismissed given the new performance requirements it had adopted. Failure to make the substantial service demonstrations by the new deadlines of March 4, 2014 and September 1, 2016 without seeking and obtaining an extension from the FCC would result in license forfeiture.

Educational Broadband Service ( EBS ) licensees were required to demonstrate that they are providing substantial service in their license areas by November 1, 2011. To meet the substantial service requirements for EBS spectrum, we arranged with our EBS licensees to either (a) have the EBS licensee continue to use the spectrum to provide educational services in the cases where the EBS licensee is currently providing such service or (b) provide educational services on a network that was installed by us, at our cost, either of which option is intended to deliver educational services over the spectrum in compliance with the FCC s educational safe harbor to meet the substantial service showing by the deadline. We have completed build-out activities for our EBS leases. All of the EBS licensees with whom we have leases have filed substantial service showings, which the FCC has accepted.

The substantial service deadline for Broadband Radio Service ( BRS ) spectrum was May 1, 2011. With respect to our domestic BRS spectrum, we have constructed and are operating a commercial system using the spectrum to meet the FCC substantial service requirement. The FCC accepted our substantial service showings and renewed our BRS licenses on September 20, 2011.

We also operate or hold spectrum licenses through various subsidiaries in Canada and Norway. In Canada, our 2.3 GHz licenses are subject to mid-term in-use demonstration requirements by November 2012 and April 2013 for 63 and 24 of our licenses, respectively. In order for us to operate our Canadian spectrum under Canadian ownership rules, we will need a Canadian-controlled partner. There can be no assurance that we will find a Canadian-controlled partner who will be able to provide a viable business plan and attract appropriate financing by the build out deadline. Failure to make the in-use demonstrations for each of these licenses in the absence of an extension by Industry Canada, could result in forfeiture of the applicable licenses. At December 31, 2011, we held a total of 88 licenses in Canada. We do not have specific build-out obligations in Norway.

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

Our consolidated financial statements include the assets, liabilities and operating results of our wholly-owned and majority-owned subsidiaries as of December 31, 2011 and January 1, 2011, and for each of the two

## **Table of Contents**

fiscal years in the period ended December 31, 2011. Noncontrolling interest represents the noncontrolling shareholder's proportionate share of the net equity in our consolidated subsidiary, PacketVideo, prior to the sale of our remaining 65% stock ownership in PacketVideo in October 2010. All significant intercompany accounts and transactions have been eliminated in consolidation.

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

We operate on a 52-53 week fiscal year ending on the Saturday nearest to December 31 of the current calendar year or the following calendar year. Normally, each fiscal year consists of 52 weeks, but every five or six years the fiscal year consists of 53 weeks. Fiscal years 2011 and 2010 are 52-week years ending on December 31, 2011 and January 1, 2011, respectively. The next 53-week year will occur in 2015.

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

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

### ***Cash, Cash Equivalents, Marketable Securities and Restricted Cash***

We consider all highly liquid investments with a remaining time to maturity of three months or less when acquired to be cash equivalents. Cash equivalents at December 31, 2011 and January 1, 2011 consisted primarily of money market funds. The carrying amounts approximate fair value due to the short maturities of these instruments.

At December 31, 2011, our short-term held-to-maturity investment securities consisted of \$10.0 million in bank certificate of deposits with remaining maturities of less than one year. These securities are stated at their amortized costs which approximate their respective fair values at December 31, 2011.

Restricted cash at December 31, 2011 primarily represents net proceeds from the sale of wireless spectrum licenses that must be used to redeem our Senior Notes. Under the Note Purchase Agreement for our Senior Notes, we are not required to redeem our Senior Notes until the aggregate principal amount to be redeemed exceeds \$2.5 million.

### ***Property and Equipment***

Property and equipment is recorded at cost and depreciated using the straight-line method over the estimated useful life. Leasehold improvements are amortized over the shorter of their estimated useful lives or the remaining term of the related lease. Maintenance, repairs, and minor renewals and betterments are charged to expense as incurred.

### ***Wireless Spectrum Licenses***

We capitalize as intangible assets wireless spectrum licenses that we acquire from third parties or through government auctions. For wireless spectrum licenses purchased directly from third parties or through spectrum auctions, the cost basis of the wireless spectrum asset includes the purchase price paid for the license at the time of acquisition plus legal costs incurred to acquire the license. For wireless spectrum licenses acquired through a business combination or through an asset acquisition, the cost basis of the wireless spectrum asset is determined through an allocation of the total purchase price to the tangible and identifiable intangible assets and liabilities of

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**Table of Contents**

the acquired business or asset(s) and includes any deferred tax liabilities determined in accordance with accounting standards for acquired temporary differences in certain purchase transactions that are not accounted for as business combinations. For leased wireless spectrum rights, the asset and related liability are recorded at the net present value of future cash outflows using our incremental borrowing rate at the time of acquisition, renewal or extension of the lease. For individual wireless spectrum licenses acquired as a group in a single transaction we allocate cost to the individual licenses based on their relative value. Upon sale of our wireless spectrum licenses, the cost basis relieved is based upon this same value.

We have determined that certain of our wireless spectrum licenses meet the definition of indefinite-lived intangible assets because the licenses are either perpetual or may be renewed periodically for a nominal fee, provided that we continue to meet the service and geographic coverage provisions. We have also determined that there are currently no legal, regulatory, contractual, competitive, economic or other factors that limit the useful lives of these wireless spectrum licenses.

Wireless spectrum licenses for which we have acquired lease rights from third parties are considered to have finite lives. The wireless license asset is then amortized over the contractual life of the lease. We amortize these assets on a straight-line basis over the initial license period. Amortization expense on wireless spectrum licenses is charged to general and administrative expense. We have also determined that there are currently no legal, regulatory, contractual, competitive, economic or other factors that limit the useful lives of these finite-lived wireless spectrum licenses.

Wireless spectrum licenses that we anticipate selling within the next twelve months are classified as assets held for sale and are no longer amortized. During the year ended December 31, 2011, we reclassified \$5.8 million from wireless spectrum licenses held for sale to wireless spectrum licenses, net, in the consolidated balance sheet as we anticipate that sales of these licenses within the next twelve months is not probable.

We determined the fair value of our wireless spectrum licenses utilizing both a market approach and an income approach. Under the market approach, we determined fair value through an analysis of sales and offerings of comparable assets, including recent sales of our AWS licenses and FCC auctions of similar wireless spectrum. Sales and offering prices for the comparable assets are adjusted to reflect differences between our wireless spectrum licenses and the comparable assets, such as location, time and terms of sale, use and utility, trends in technology and consumer demand, and regulatory issues, that may potentially affect the value of our wireless spectrum.

Under the income approach, we determine the fair value of spectrum using the Greenfield Approach which is a discounted cash flow model that assumes the only asset owned by us at the date of the valuation is the license itself. This valuation analysis attempts to determine what cash flow contributions might ensue after accounting for start-up and capital investments and applying certain performance expectations. We utilized a 10-year discrete period to isolate cash flows attributable to the licenses including modeling the hypothetical build out of a nationwide network. Assumptions key in estimating fair value under this method include, but are not limited to, revenue and subscriber growth rates, operating expenditures, capital expenditures and timing of build out, market share achieved, terminal value growth rate, tax rates and discount rate. The assumptions which underlie the development of the network, subscriber base and other critical inputs of the discounted cash flow model were based on a combination of average marketplace participant data and our historical results and business plans. The discount rate used in the model represents a weighted average cost of capital taking into account the cost of debt and equity financing weighted by the percentage of debt and equity in a target capital structure and the perceived risk associated with an intangible asset such as our spectrum licenses. The terminal value growth rate represents our estimate of the marketplace's long term growth rate.

***Spectrum Support and Maintenance Costs***

We incur costs to support and maintain our wireless spectrum licenses. These costs are expensed as incurred and are included in general and administrative expense in the consolidated statement of operations. Revenues

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## **Table of Contents**

received from the operation of networks are recorded as a reduction to our spectrum support and maintenance costs as wireless service is not our primary business. These revenues were not significant during the years ended December 31, 2011 and January 1, 2011.

### ***Spectrum Clearing Obligations***

We own Advanced Wireless Services ( AWS ) spectrum that we acquired via the Federal Communications Commission ( FCC ) Auction #66. Our AWS spectrum currently is used by U.S. federal government and/or incumbent commercial licensees. FCC rules require winning bidders to avoid interfering with these existing users or to clear the incumbent users from the spectrum through specified relocation procedures. We have not incurred any spectrum clearing costs to date.

### ***Valuation of Indefinite-Lived Intangibles***

We perform an annual review for impairment, or more frequently if impairment indicators arise. Indefinite-lived intangible assets are considered to be impaired if we determine that their carrying values exceed their fair values. We test indefinite-lived intangible assets, such as indefinite-lived wireless spectrum licenses, at the unit of accounting level by making a determination of the fair value of the intangible asset. If the fair value of the intangible asset is less than its carrying value, an impairment loss is recognized in an amount equal to the difference. We also evaluate the remaining useful life of our intangible assets that are not subject to amortization on an annual basis to determine whether events and circumstances continue to support an indefinite useful life. If an intangible asset that is not being amortized is subsequently determined to have a finite useful life, that asset is tested for impairment. After recognition of the impairment, if any, the asset is amortized prospectively over its estimated remaining useful life and accounted for in the same manner as other intangible assets that are subject to amortization.

### ***Impairment of Long-Lived Assets***

We review long-lived assets to be held and used, including acquired intangible assets subject to amortization and property and equipment, for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be fully recoverable. Conditions that would necessitate an impairment assessment include a significant decline in the market price of an asset or asset group, a significant adverse change in the extent or manner in which an asset or asset group is being used, the loss of legal ownership or title to the asset, significant negative industry or economic trends or the presence of other indicators that would indicate that the carrying amount of an asset or asset group is not recoverable. A long-lived asset is considered to be impaired if the estimated undiscounted future cash flows resulting from the use of the asset and its eventual disposition are not sufficient to recover the carrying value of the asset.

### ***Deferred Financing Costs, Debt Discount and Detachable Debt-Related Warrants***

Costs incurred to issue debt are deferred and included in other noncurrent assets in the accompanying consolidated balance sheets. We amortize debt issuance costs over the expected term of the related debt using the effective interest method. Debt discounts and the fair value of any warrants issued in conjunction with the debt are recorded as a reduction to the debt balance and accreted over the expected term of the debt to interest expense using the effective interest method.

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

Upon our debt amendments in December 2011 and March 2010, we first determined if they constituted a troubled debt restructuring. A restructuring of a debt constitutes a troubled debt restructuring if the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider. A creditor is deemed to have granted a concession if the debtor's effective

## **Table of Contents**

borrowing rate on the restructured debt, after giving effect to all the terms of the restructured debt, including any new or revised sweeteners, such as the Fee Notes and Senior Incremental Notes issued in the March 2010 modification, is less than the effective borrowing rate of the old debt immediately before the restructuring.

To determine if the noteholders granted us concessions as a result of the amendments and waivers, we determined the respective effective interest rates of the old debt immediately before the restructuring by using the respective stated interest rates in effect prior to the respective amendments and waivers plus the respective effective interest rates used for amortization of discounts and issue costs. We then determined the respective total cash flows under the new terms of each note and solved for the discount rate that equated these cash flows to the respective carrying value of the old debt at the date of the respective amendments. We also considered the current fair value of the Senior Incremental Notes which was made possible by the 2010 Amendment and Waiver.

Costs incurred with third parties directly related to the troubled debt restructuring are expensed as incurred.

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

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

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

### ***Share-Based Compensation***

We recognize the fair value of share-based compensation awards in results of operations over the requisite service period of the individual grants, which generally equals the vesting period. Compensation expense for awards with graded vesting is recognized on a straight-line basis with adjustments to at least equal the measured cost of the vested tranches.

We estimate the fair value of stock options awards on the grant date using the Black-Scholes option pricing model. Determining the fair value of stock-based awards at the grant date under this model requires judgment, including estimating our volatility, employee stock option exercise behaviors and forfeiture rates. The assumptions used in calculating the fair value of stock-based awards represent our best estimates, but these estimates involve inherent uncertainties and the application of management judgment.

We measure the fair value of restricted stock awards using the number of restricted shares issued multiplied by the closing share price of NextWave Common Stock on the grant date.



## **Table of Contents**

### ***Foreign Currency***

Monetary assets and liabilities of our foreign subsidiaries whose functional currency is the U.S. dollar are remeasured into U.S. dollars at the exchange rate in effect at the balance sheet date. Revenues, expenses, gains and losses associated with monetary assets and liabilities are translated at the rates of exchange that approximate the rates in effect at the transaction date. Non-monetary assets and liabilities and related elements of revenues, expenses, gains and losses are remeasured at historical exchange rates. Resulting exchange gains or losses are recognized in the consolidated statements of operations in other income and expense, net.

Assets and liabilities of our foreign subsidiaries whose functional currency is other than the U.S. dollar are translated into U.S. dollars at exchange rates in effect as of the balance sheet date and monthly results of operations are translated into U.S. dollars at the average rates of exchange for that month. Gains or losses resulting from these foreign currency translations are recorded in accumulated other comprehensive income (loss) in the consolidated balance sheets.

Net foreign currency exchange losses included in our loss from continuing operations in our consolidated statements of operations totaled \$11,000 and \$1,000 for the years ended December 31, 2011 and January 1, 2011, respectively.

### ***Guarantees***

As guarantor, we recognize a liability for the fair value of certain guarantees at the inception of a guarantee and provide disclosures about our obligations under certain guarantees that we have issued.

### ***Income Taxes***

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

We recognize a deferred tax asset or liability whenever there are future tax effects from temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to the years in which those differences are expected to be recovered or settled. In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent financial operations. When considered necessary, we record a valuation allowance to reduce the carrying amount of deferred tax assets if it is more likely than not all or a portion of the asset will not be realized.

### ***Accumulated Other Comprehensive Income***

Accumulated other comprehensive income includes unrealized foreign currency translation adjustments that are excluded from the consolidated statements of operations and are reported as a separate component in stockholders' deficit. Accumulated other comprehensive income consists of accumulated foreign currency translation adjustments at December 31, 2011 and January 1, 2011.

### ***Net Income (Loss) Per Common Share Information***

Basic and diluted net income (loss) per common share for the two fiscal years ended December 31, 2011 is computed by dividing net income (loss) by the weighted-average number of common shares outstanding during

**Table of Contents**

the respective periods, without consideration of common stock equivalents. If there is a loss from continuing operations, diluted net income (loss) per share is computed in the same manner as basic net income (loss) per share is computed, even if we report net income after adjusting for discontinued operations.

Our weighted-average number of common shares outstanding includes the weighted-average number of 1.4 million and 1.8 million of warrants, held by a related party (Note 2), exercisable for shares of our common stock during the years ended December 31, 2011 and January 1, 2011, respectively, as they are issuable for an exercise price of \$0.07 each. At December 31, 2011, 0.4 million of these warrants remained outstanding. During the year ended December 31, 2011, 1.4 million of these warrants were exercised for cash of \$0.1 million resulting in the issuance of 1.4 million common shares.

The following securities that could potentially reduce net income or increase net loss per share in the future are not included in the determination of diluted income (loss) per share as they are antidilutive. The share amounts are determined using a weighted-average of the common stock equivalents outstanding during the respective periods.

	Years Ended	
	December 31, 2011	January 1, 2011
<i>(in thousands)</i>		
Third Lien Notes	8,161	7,179
Outstanding stock options	1,504	2,762
Unvested restricted stock	1,236	456

**Recent Accounting Pronouncements**

In June 2011, the FASB issued new guidance on the presentation of comprehensive income. The new guidance eliminates the current option to report other comprehensive income and its components in the statement of changes in equity. Components of net income and other comprehensive income must be presented in one continuous statement, referred to as the statement of comprehensive income, or in two separate, but consecutive, statements. While the new guidance changes the presentation of comprehensive income, there are no changes to the components that are recognized in net income or other comprehensive income under current accounting guidance. This new guidance was effective for fiscal years and interim periods beginning after December 15, 2011. Subsequently, in December 2011, the FASB issued new guidance which indefinitely defers the requirement to present on the face of the financial statements reclassification adjustments for items that are reclassified from other comprehensive income to net income in the statement(s) where the components of net income and other comprehensive income are presented. This new guidance is effective for interim and annual periods beginning after December 15, 2011 and is to be applied retrospectively. Our election to early adopt this new guidance did not have an impact on our consolidated financial position, results of operations or cash flows.

In May 2011, the FASB issued authoritative guidance related to fair value measurements and disclosures. The new guidance results in a consistent definition of fair value and common requirements for measurement of and disclosure about fair value between accounting principles generally accepted in the United States ( U.S. GAAP ) and International Financial Reporting Standards ( IFRS ). The guidance is effective for our first quarter beginning after January 1, 2012. We are currently assessing the impact of this guidance on our consolidated financial position, results of operations and cash flows.

**2. Related Party Transactions****Debt-Related Transactions**

Avenue Capital Management II, L.P., is an affiliate of Avenue Capital Group ( Avenue Capital ). Robert Symington, a portfolio manager with Avenue Capital, is a member of our Board of Directors. As of December 31, 2011, Avenue Capital and its affiliates beneficially owned shares of our issued and outstanding

**Table of Contents**

common stock, such that Avenue Capital would be considered a related party. At December 31, 2011, Avenue Capital owned \$103.5 million, or 75%, of the aggregate principal amount of our Senior Notes; \$150.5 million, or 78%, of the aggregate principal amount of our Second Lien Notes; and \$194.6 million, or 28%, of the aggregate principal amount of our Third Lien Notes.

As of December 31, 2011, Solus Core Opportunities Master Fund Ltd and its affiliates and co-investors ( Solus ) beneficially owned shares of our issued and outstanding common stock, such that Solus would be considered a related party. At December 31, 2011, Solus owned \$34.3 million, or 25%, of the aggregate principal amount of our Senior Notes; \$42.8 million, or 22%, of the aggregate principal amount of our Second Lien Notes; and \$79.8 million, or 12%, of the aggregate principal amount of our Third Lien Notes. At December 31, 2011 and January 1, 2011 Solus also held 0.4 million and 1.8 million of warrants exercisable for shares of our common stock for an exercise price of \$0.07 each. During the year ended December 31, 2011, Solus exercised 1.4 million of these warrants for cash of \$0.1 million resulting in the issuance of 1.4 million common shares.

On December 14, 2011, we entered into the 2011 Amendment and Waiver to our Senior Notes, our Second Lien Notes and our Third Lien Notes, whereby all holders of our Senior Notes, Second Lien Notes and Third Lien Notes agreed to extend the maturity of the Senior Notes to December 31, 2012; extend the maturity of the Second Lien Notes to January 31, 2013; extend the maturity of the Third Lien Notes to February 28, 2013; and permanently waive past events of default under the Notes. No amendment or consent fee was paid to the Holders in connection with the 2011 Amendment and Waiver.

On March 16, 2010, we entered into the 2010 Amendment and Waiver to the agreements governing our Senior Notes, Second Lien Notes and Third Lien Notes. Pursuant to the 2010 Amendment and Waiver, the maturity date of our Senior Notes was extended from July 17, 2010 to July 17, 2011, with an additional extension to October 17, 2011 if certain conditions are met, including the pendency of asset sales that would yield net proceeds sufficient to repay all then-outstanding Senior Notes. In addition, the maturity date of our Second Lien Notes was extended from December 31, 2010 to November 30, 2011. As a result of the 2010 Amendment and Waiver, the interest payable on our Senior Notes and Second Lien Notes was increased to a rate of 15% per annum and the interest payable on our Third Lien Notes was increased to a rate of 12% per annum initially, increasing 1% per annum on each of December 31, 2010, March 30, 2011, June 30, 2011 and September 30, 2011 to a maximum of 16%. As a result of the 2010 Amendment and Waiver, all Notes receive only payment-in-kind interest for the full term of such Notes, unless we elect to pay cash interest, and the redemption premium on the Notes was eliminated. The 2010 Amendment and Waiver reduced the requirement to maintain a minimum cash balance from \$5.0 million to \$1.0 million and, after payment in full on October 12, 2010 of certain designated Senior Notes with an aggregate principal and accrued interest amount of \$58.8 million and the Senior Incremental Notes (as defined below) with an aggregate principal and accrued amount of \$26.6 million, permitted us to retain up to \$12.5 million for general working capital purposes and permitted investments.

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

## **Table of Contents**

As permitted by the 2010 Amendment and Waiver, during the second quarter of 2010, we received cash of \$20.0 million and \$5.0 million and issued Senior Incremental Notes in the same amount to Avenue Capital, acting on behalf of its managed investment funds signatory thereto, and Solus, respectively. We repaid the Senior Incremental Notes in full in October 2010.

The 2010 Amendment and Waiver to our Third Lien Notes, which increased the interest rate payable on our Third Lien Notes, was determined to have been accomplished with debt instruments that are substantially different, in accordance with generally accepted accounting principles, resulting in an effective extinguishment of the existing Third Lien Notes and a new issue of Third Lien Notes as of the amendment date for accounting purposes. The new issue of Third Lien Notes was recorded at fair value and that amount was used to determine the net debt extinguishment gain of \$38.0 million recognized during the nine months ended October 2, 2010, in other income in the accompanying condensed consolidated statements of operations.

### ***Business Divestitures and Revenue Transactions***

On October 8, 2010, we sold our remaining 65% ownership interest in our PacketVideo subsidiary to DOCOMO, a customer of PacketVideo, for \$111.6 million. Of the net sales proceeds of \$106.5 million, after deducting estimated direct and incremental costs of \$5.1 million, we retained \$12.5 million for working capital and permitted investments and redeemed \$94.7 million in principal and accrued interest on our Senior Notes on October 12, 2010. In July 2009, DOCOMO acquired a 35% ownership interest in PacketVideo.

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

PacketVideo sells and licenses versions of its multimedia player to DOCOMO for installation into DOCOMO handset models. PacketVideo recognized \$11.4 million in related party revenues and \$0.7 million in cost of revenues, during the year ended January 1, 2011 from DOCOMO in the consolidated statements of operations for our discontinued operations.

In June 2010, we sold the capital stock of our Slovakia based subsidiary, WiMAX Telecom Slovakia s.r.o ( WT SRO ) to flyhigh, a private limited liability company of which the controlling shareholder is the former managing director and statutory representative of WT SRO, for \$0.1 million. Upon closing of the sale, we have no remaining obligations to provide financing to support the ongoing operations of WT SRO. In connection with the sale, we entered into an additional consideration agreement with flyhigh whereby we received \$0.4 million during the year ended December 31, 2011 upon flyhigh's sale of WT SRO to a third party.

In June 2010, we sold the capital stock of our two Chilean subsidiaries, Southam Chile SA and Sociedad Televisora CBC Ltd, to VTR GlobalCom S.A. and VTR Ingenieria S.A., the holders of our notes payable secured by the Chilean spectrum, for net proceeds of \$0.7 million and the assumption of the notes payable aggregating \$4.3 million.

**Table of Contents****3. Wireless Spectrum Licenses**

Wireless spectrum licenses consist of the following:

	December 31, 2011			January 1, 2011		
	Weighted Average Amortization		Portion Representing	Weighted Average Amortization		Portion Representing
	Period (in years)	Wireless Spectrum Licenses	Deferred Tax Liability	Period (in years)	Wireless Spectrum Licenses	Deferred Tax Liability
<i>(dollars in thousands)</i>						
Wireless spectrum licenses subject to amortization included in continuing operations:						
Gross carrying amount	6.8	\$ 93,441		7.4	\$ 93,042	
Accumulated amortization		(39,286)			(31,719)	
		54,155			61,323	
Wireless spectrum licenses not subject to amortization included in continuing operations		381,367	\$ 90,106		376,458	\$ 90,358
Total wireless spectrum licenses, net		435,522	90,106		437,781	90,358
Wireless spectrum licenses held for sale					6,535	