

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PT
HOLDCO, INC., PRIMUS TELECOMMUNICATIONS CANADA INC., PTUS, INC.,
PRIMUS TELECOMMUNICATIONS, INC., AND LINGO, INC.**

Applicants

**MOTION RECORD
(Passing of Accounts and Approval of Activities)
(Returnable September 20, 2018)**

September 12, 2018

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TO THE ATTACHED SERVICE LIST:

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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OF PT HOLDCO, INC., PRIMUS TELECOMMUNICATIONS CANADA, INC., PTUS, INC.,
PRIMUS TELECOMMUNICATIONS, INC., AND LINGO, INC.

Applicants.

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(Updated September 15, 2016)**

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APPLICANTS

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Tab 1

**ONTARIO
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Applicants

**NOTICE OF MOTION
(Passing of Accounts and Approval of Activities)**

FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”), will make a motion to a judge presiding over the Commercial List on September 20, 2018 or as soon after that time as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form of the draft Passing of Accounts and Approval of Activities Order included in the Motion Record (the “**Passing of Accounts and Approval of Activities Order**”), which, among other things:

- (a) approves the fees and disbursements of the Monitor and the Monitor’s Canadian counsel Blake, Cassels & Graydon LLP (the “**Monitor’s Canadian Counsel**”), and the Monitor’s US Counsel, Elliott Greenleaf LLP (the “**Monitor’s US Counsel**”), in each case for the period ending August 31, 2018;
- (b) provides that the fees and disbursements of the Monitor, the Monitor’s Canadian Counsel and the Monitor’s US Counsel to complete the Monitor’s remaining duties and administration of the CCAA Proceedings (as defined below) are only subject to further approval of the Court in the event that: (i) they exceed an

aggregate total of CAD \$40,000 (excluding applicable taxes), and (ii) the Bank of Montreal as administrative agent for the lending syndicate of the Applicants (the “**Agent**”) requests that such approval be sought; and

- (c) approves the Sixth Report of the Monitor dated December 29, 2017 (the “**Sixth Report**”) and the Seventh Report of the Monitor dated September 11, 2018 (the “**Seventh Report**”), and the actions, conduct and activities of the Monitor described therein.

THE GROUNDS FOR THE MOTION ARE:

Background

2. On January 19, 2016, the Applicants made an application under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was granted by the Honourable Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) commencing proceedings bearing Court File No. CV-16-11257-00CL (the “**CCAA Proceedings**”).

3. Pursuant to the Initial Order, the Monitor was authorized and empowered to act as the foreign representative in the CCAA Proceedings for the purpose of having such proceedings recognized in the United States pursuant to Chapter 15 of Title 11 of the United States Bankruptcy Code (“**Chapter 15**”) and to take such other steps as may be authorized by the Court and any ancillary relief in respect thereto.

4. On January 21, 2016, the Monitor filed petitions in the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) commencing Chapter 15 recognition proceedings.

5. Pursuant to the Initial Order, the Honourable Mr. Justice Penny granted a stay of proceedings against the Applicants until February 18, 2016 (the “**Stay Period**”). The Stay Period was extended a number of times by Order of this Court and expired on September 1, 2017 as no extension of the Stay Period beyond that date was sought.

6. On February 25, 2016, the Honourable Mr. Justice Hainey granted an approval and vesting order approving a transaction (the “**Birch Transaction**”) in connection with an asset purchase agreement dated January 19, 2016 by and between certain of the Applicants, as vendors, and Birch Communications, Inc. (and its permitted assigns), as purchaser (the “**Purchaser**”).

7. The Birch Transaction closed on April 1, 2016.

8. On September 16, 2016, the Honourable Mr. Justice Newbould granted an Order, *inter alia*, terminating the CCAA Proceedings and discharging the Monitor upon the filing of the Monitor’s Discharge Certificate (as defined therein).

9. On January 30, 2018, the US Court issued an order terminating the Chapter 15 recognition proceedings.

Fees & Disbursements

10. Pursuant to Paragraph 29 of the Initial Order, the Monitor, the Monitor’s Canadian Counsel and the Monitor’s US Counsel are entitled to be paid and have been paid their fees and disbursements at their standard rates and charges by the Applicants throughout the CCAA Proceedings.

11. Pursuant to Paragraph 30 of the Initial Order, the Monitor and its legal counsel must pass their accounts to the Court from time to time.

12. Also on September 16, 2016, the Honourable Mr. Justice Newbould granted an Order (the “**Initial Approval of Fees and Activities Order**”), *inter alia*,

- (a) approving the fees and disbursements of the Monitor, the Monitor’s Canadian Counsel and the Monitor’s US Counsel to August 31, 2016;
- (b) ordering that the fees and disbursements of the Monitor, the Monitor’s Canadian Counsel and the Monitor’s US Counsel to complete the Monitor’s remaining duties and administration of these proceedings and the Chapter 15 recognition

proceedings (collectively, the “**Subsequent Fees**”) would only be subject to approval by further order of this Court in the event that:

- (i) the Subsequent Fees exceed an aggregate total of \$100,000 (excluding applicable taxes) with respect to the Monitor and the Monitor’s Canadian Counsel and US\$25,000 (including applicable taxes) with respect to the Monitor’s US Counsel (collectively, the “**Subsequent Fee Approval Threshold**”); and
- (ii) the Agent requests that such approval be sought.

13. As a result of the complexities described in the Seventh Report (including, among other things, the reconciliation of post-filing amounts owing to Bell Canada, the wind-down of the Applicants’ business in the United States and filings related to same, resolution of certain U.S. regulatory matters and resolution of certain post-closing matters with the Purchaser), the Subsequent Fees exceed the Subsequent Fee Approval Threshold and the Agent has advised the Monitor that due to the passage of time since the granting of the Initial Approval of Fees and Activities Order (September 16, 2016), it is of the view that it would be appropriate for the Monitor to seek further Court approval of the Subsequent Fees and its activities. The Monitor understands that the Agent does not oppose the approval of the Subsequent Fees and approval of the Monitor’s activities respectfully requested herein.

14. The Monitor, the Monitor’s Canadian Counsel and the Monitor’s US Counsel have maintained records of their professional costs and time, as detailed in the affidavits of Steven Bissell, Linc Rogers and Rafael Zahralddin-Aravena.

15. The Monitor’s fees and disbursements from September 1, 2016 to August 31, 2018 total \$403,339.61 (including fees of \$380,143.50 and disbursements of \$23,196.11 and excluding applicable taxes).

16. The Monitor’s Canadian Counsel’s fees and disbursements from September 1, 2016 to August 31, 2018 total \$258,360.37 (including fees of \$257,343.50 and disbursements of \$1,016.87 and excluding applicable taxes).

17. The Monitor's US Counsel's fees and disbursements from September 1, 2016 to August 31, 2018 total USD \$53,637.01 (including fees of \$53,522.50 and disbursements of \$114.51 and including applicable taxes, as none are payable).

18. The fees and disbursements are reasonable in the circumstances and validly incurred in connection with the provisions of the Orders issued in these CCAA Proceedings.

Monitor's Reports and Activities

19. Since the commencement of the CCAA Proceedings, the Monitor has carried out its duties and responsibilities in accordance with the CCAA and Orders of the Court in these CCAA Proceedings.

20. To date, this Court has approved Pre-Filing Report of FTI Consulting Canada Inc. dated January 18, 2016, in its capacity as proposed Monitor, the First Report of the Monitor dated February 10, 2016, the Second Report of the Monitor dated February 19, 2016, the Third Report of the Monitor dated July 13, 2016, the Fourth Report of the Monitor dated September 14, 2016, and the Fifth Report of the Monitor dated March 6, 2017 (the "**Fifth Report**").

21. The activities and conduct undertaken and provided by the Monitor since filing the Fifth Report are described in the Sixth Report and Seventh Report, each filed with this Court.

Authorities to be Relied on

22. The Monitor relies on:

- (a) the provisions of the CCAA;
- (b) paragraphs 29 and 30 of the Initial Order;
- (c) the Orders issued by the Court in these CCAA Proceedings;
- (d) the inherent and equitable jurisdiction of this Honourable Court;
- (e) Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O., 1990, Reg. 194, as amended; and

- (f) such further and other grounds as counsel may advise and this Honourable Court may see fit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Seventh Report, filed;
- (b) the Affidavit of Steven Bissell, sworn September 11, 2018, filed;
- (c) the Affidavit of Linc Rogers, sworn September 7, 2018, filed;
- (d) the Affidavit of Rafael Zahralddin-Aravena, sworn September 4, 2018, filed; and
- (e) such further and other material as counsel may advise and this Honourable Court may permit.

Date: September 12, 2018

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Canada Inc.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

Court File No. CV-16-11257-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF PT HOLDCO, INC., PRIMUS TELECOMMUNICATIONS CANADA INC., PTUS,
INC., PRIMUS TELECOMMUNICATIONS, INC., AND LINGO, INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(Passing of Accounts and Approval of Activities)
Returnable September 20, 2018

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Tab 2

Court File No. CV-16-11257-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	MONDAY, THE 20 th
)	
JUSTICE [●])	DAY OF SEPTEMBER, 2018

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF PT HOLDCO, INC., PRIMUS TELECOMMUNICATIONS CANADA INC., PTUS,
INC., PRIMUS TELECOMMUNICATIONS, INC., AND LINGO, INC.**

Applicants

PASSING OF ACCOUNTS AND APPROVAL OF ACTIVITIES ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Seventh Report of the Monitor dated September 11, 2018 (the "**Seventh Report of the Monitor**"), the affidavit of Steven Bissell, sworn September 11, 2018, the affidavit of Linc Rogers sworn September 7, 2018 and the affidavit of Rafael Zahralddin-Aravena sworn September 4, 2018, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for those parties listed on the counsel slip for today's hearing, no one else appearing for any other person on the service list, although duly served as appears from the affidavit of service of Agnieszka Kawalec sworn September 12, 2018.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that (i) the fees and disbursements of the Monitor for the period from September 1, 2016 to August 31, 2018, inclusive, totaling CAD \$403,339.61 (excluding applicable taxes), (ii) the fees and disbursements of the Monitor’s Canadian counsel, Blake, Cassels & Graydon LLP (the “**Monitor’s Canadian Counsel**”) for the period from September 1, 2016 to August 31, 2018, inclusive, totaling CAD \$258,360.37 (excluding applicable taxes), and (iii) the fees and disbursements of the Monitor’s US counsel, Elliott Greenleaf LLP (the “**Monitor’s US Counsel**”) for the period from September 1, 2016 to August 31, 2018, inclusive, totaling USD \$53,637.01 (including applicable taxes), be and are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, the Monitor’s Canadian Counsel and the Monitor’s US Counsel to complete the Monitor’s remaining duties and administration of these proceedings (collectively, the “**Termination of CCAA Fees**”) shall only be subject to approval by further order of this Court, in the event that (i) the Termination of CCAA Fees exceed an aggregate total of CAD \$40,000 (excluding applicable taxes) (collectively, the “**Termination of CCAA Fee Threshold**”), and (ii) Bank of Montreal as administrative agent for the lending syndicate requests that such approval be sought within three business days of receiving written notice of the quantum by which the Termination of CCAA Fees exceed the Termination of CCAA Fees Threshold.

4. **THIS COURT ORDERS** that the Sixth Report of the Monitor, dated December 29, 2017, and the Seventh Report of the Monitor, and the actions, conduct and activities of the Monitor described therein are hereby approved.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED

Court File No. CV-16-11257-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

**PASSING OF ACCOUNTS AND APPROVAL OF
ACTIVITIES ORDER**

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Monitor

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