



**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)**

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing on January 19, 2016, at 10:00am, at 330 University Avenue, Toronto, Ontario.

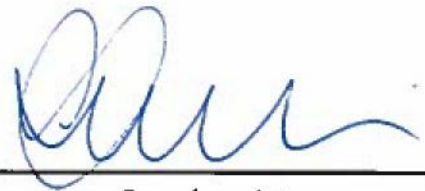
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date January 19, 2015

Issued by



Local registrar

Address of
court office

330 University Avenue, 7th floor
Toronto, Ontario
M5G 1K7

TO: THE SERVICE LIST

APPLICATION

1. PT Holdco, Inc. ("**Holdco**"), Primus Telecommunications Canada Inc. ("**Primus Canada**"), PTUS, Inc. ("**PTUS**"), Primus Telecommunications, Inc. ("**PTI**") and Lingo, Inc. ("**Lingo**", and together with PTUS and PTI, the "**U.S. Primus Entities**", and collectively with Holdco and Primus Canada, the "**Primus Entities**" or the "**Applicants**") make this application for an Initial Order substantially in the form attached at tab 3 of the Application Record, among other things:

- (a) abridging the time for service of this Notice of Application and dispensing with service on any person other than those served;
- (b) declaring that the Primus Entities are parties to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;
- (c) appointing FTI Consulting Canada Inc. as an officer of this Court to monitor the assets, businesses and affairs of the Primus Entities (in such capacity, the "**Monitor**");
- (d) staying all proceedings taken or that might be taken in respect of the Primus Entities, their directors and officers and the Monitor;
- (e) authorizing the Primus Entities to file with this Court a plan of compromise or arrangement;
- (f) restraining all persons having oral or written agreements with the Primus Entities or statutory or regulatory mandates for the supply of goods and/or services to the Primus Entities, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, and, for greater certainty, the credit card

processing services provided by Chase Paymentech Solutions, from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Primus Entities;

- (g) granting the following charges over the property of the Primus Entities, to rank behind all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, in favour of any Person that has not been served with notice of this order, including, subject to further Order of this Court :
 - i. a charge in favour of counsel to the Primus Entities, the Monitor and the Monitor's counsel in the amount of \$1,000,000 (the "**Administration Charge**") to secure payment of their fees and disbursements incurred in connection with this proceeding; and
 - ii. a charge to protect the directors and officers of the Primus Entities from certain potential liabilities in the amount of \$3,100,000 million (the "**D&O Charge**");
- (h) authorizing the Monitor to act as the foreign representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including, if deemed advisable by the Primus Entities, to apply for recognition of these proceedings in the United States pursuant to Chapter 15 of the *United States Code*, 11 U.S.C. §§ 101- 1532 and to take such other steps as may be authorized by the Court and any ancillary relief in respect thereto;
- (i) granting such further and other relief as this Court may deem just.

2. The grounds for the application are as follows:

The Applicants

- (a) Holdco and Primus Canada are private companies incorporated under the *Business Corporations Act*, RSO 1900, c B 16, with registered head offices in Toronto, Ontario. PTUS, PTI, and Lingo are private companies incorporated under the laws of Delaware, with registered head offices in Wilmington, Delaware;
- (b) Holdco is the principal holding company of the Primus Entities, with PTUS and Primus Canada the wholly owned subsidiaries of Holdco. PTUS is the holding company for PTI and Lingo, which are the Primus Entities' U.S. operating companies. Primus Canada is the Primus Entities' Canadian operating company;
- (c) The Primus Entities carry on business in Canada and the United States re-selling telecommunications services;
- (d) The Primus Entities employ approximately 530 people in Canada and the United States;

The Primus Entities' Financial Difficulties

- (e) The Primus Entities have been and continue to be facing severe liquidity issues due to, *inter alia*, over-leverage, revenue declines and high capital costs. The Primus Entities' significant fixed costs have hindered their ability to respond to such revenue declines;
- (f) As a result of, *inter alia*, the decline in demand for long-distance, local phone, and pre-paid calling cards, and combined with the Primus Entities' inability to offer mobile telephone services and to compete with service bundles, earnings before interest, taxes, depreciation and

amortization ("EBITDA") and net operating profits have deteriorated over the last three years, and continue to deteriorate;

The Primus Entities are Insolvent

- (g) The Primus Entities do not have the liquidity to meet their payment obligations as they become due and they are unable to satisfy the financial covenants set out in their secured credit agreements;
- (h) The Primus Entities have defaulted under these credit agreements which, if enforced, the Primus Entities would not be able to satisfy. The Primus Entities have operated under forbearance agreements in respect of these defaults since February 4, 2015;
- (i) The Primus Entities have been unable to successfully restructure their business and operations outside of formal insolvency proceedings;
- (j) Without protection under the CCAA, a shut-down of operations or the commencement of self-remedy measures by creditors is inevitable, which would be extremely detrimental to the Primus Entities' employees, suppliers, customers, and other stakeholders;

Other Grounds

- (k) The provisions of the CCAA, including ss. 2(1), 3(1), 11.02(3), 11.51, 11.52(2) and 56;
- (l) The inherent and equitable jurisdiction of this Court;
- (m) Rules 2.03, 3.02, 14.05(2), 16 and 38 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

- (n) such further and other grounds as counsel may advise and this court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Michael Nowlan sworn January 18, 2015, and the exhibits attached thereto;
- (b) the Pre-Filing Report of FTI Consulting Canada Inc., as proposed Monitor; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

January 19, 2015

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Lawyers for the Applicants

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 APPLICATION

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