

**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  
(Returnable February 10, 2016)  
(Re Knew Sales Hardship Payment et al)**

February 9, 2016

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
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**Lawyers for the Applicants**

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**TAB 1**

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**ONTARIO  
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INC., PRIMUS TELECOMMUNICATIONS, INC., AND LINGO, INC.

**Applicants**

**NOTICE OF MOTION  
(Returnable February 10, 2016)  
(Re Knew Sales Hardship Payment)**

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**") will make a motion to the Honourable Justice Penny presiding over the Commercial List on Wednesday, February 10, 2016 at 9:30 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, 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 order located at Tab 3 of the Motion Record:

- (a) Authorizing the Primus Entities to pay the Hardship Payment (as defined below) to Knew Sales Group Inc. ("**Knew Sales**") within two business days of the date of the Order;
- (b) Directing that the Hardship Payment be held in trust by Knew Sales on behalf of the contractors (the "**Contractors**") of Knew Sales who are owed, but have not been paid, amounts owing to them by Knew Sales in respect of services provided under the marketing and sales agency agreement, dated January 15, 2015 (the "**Agency Agreement**") prior to January 19, 2016;
- (c) Directing that the Hardship Payment be paid to the Contractors by Knew Sales within one business day of receiving the Hardship Payment;
- (d) Directing that Knew Sales shall continue to provide services to Primus Canada in accordance with the Agency Agreement and in the ordinary course of business;
- (e) Directing that Knew Sales shall not take, and shall direct the Contractors not to take, any step inconsistent with, or do anything to interrupt or interfere with Knew Sales' obligations under the Agency Agreement;

2. An Order, substantially in the form of the draft order located at Tab 4 of the Motion Record, extending the Stay Period (as defined in paragraph 18 of the Initial Order of the Honourable Justice Penny dated January 19, 2016 until February 26, 2016; and

3. Such other and further relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

4. The Primus Entities are insolvent and have been operating under forbearance arrangements with their secured lenders since February 2015;

5. On January 19, 2016, the Primus Entities sought and received protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**");
6. In advance of their filing for CCAA protection, the Primus Entities entered into an agreement (the "**Birch APA**") to sell all or substantially all of their assets to Birch Communications Inc. (the "**Purchaser**");
7. The Birch APA identifies the contracts which are considered by the Purchaser to be essential to continuing operations, which are designated as the "**Essential Contracts**";
8. The Agency Agreement is an Essential Contract;
9. Under the Agency Agreement, Knew Sales places sales agents at kiosks in Costco Canada locations to sell Primus services to Costco members;
10. The services provided by Knew Sales and its agents generate a significant portion of the Primus Entities' revenue;
11. Due to the timing of the CCAA proceedings, the Primus Entities owe Knew Sales pre-filing amounts of approximately \$327,000, of which \$234,512.92 plus HST (the "**Hardship Payment**") comprises amounts owed to Knew Sales' sales agents;
12. Without the Hardship Payment, Knew Sales will suffer significant financial hardship and may not be able to continue operations due to solvency issues;
13. Without the payment of the Hardship Payment, Knew Sales' sales agents are unlikely to continue working, to the detriment of the Primus Entities;
14. The loss or compromise of the critical sales channel facilitated by Knew Sales and its sales agents may have a negative impact on the successful closing of the transaction contemplated under the Birch APA;

15. It is in the best interests of the Primus Entities and their stakeholders, including their customers, suppliers and employees, to make the Hardship Payment;
16. The Primus Entities have been acting in good faith and with due diligence;
17. No creditors will be harmed by the extension of the Stay Period to February 26, 2016;

**Other Grounds for Relief**

18. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
19. Rules 1.04, 1.05, 2.03, and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and
20. Such further grounds as counsel may advise and this Court may see fit.

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

1. The Affidavit of Michael Nowlan, sworn February 9, 2016, and the exhibits attached thereto;
2. The First Report of the Monitor, to be filed; and
3. Such further and other materials as counsel may advise and this Court may permit.

February 9, 2016

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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 MOTION  
(RETURNABLE FEBRUARY 10, 2016)**

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**TAB 2**

**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**Applicants**

**AFFIDAVIT OF MICHAEL NOWLAN  
(Sworn February 9, 2016)  
(Re Knew Sales Hardship Payment)**

I, Michael Nowlan, of the Town of Newmarket, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am the Chief Executive Officer and President of the Applicants 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**"). As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records of the Primus Entities and have spoken with the Monitor (defined below), certain of the directors, officers and/or employees of the Primus Entities, as necessary, and where I have relied upon such information do verily believe such information to be true.
2. This affidavit is sworn in support of the motion brought by the Primus Entities seeking

- (a) An Order, substantially in the form of the draft order located at Tab 3 of the Motion Record:
- (i) Authorizing the Primus Entities to pay the Hardship Payment (as defined below) to Knew Sales Group Inc. ("**Knew Sales**") within two business days of the date of the Order;
  - (ii) Directing that the Hardship Payment be held in trust by Knew Sales on behalf of the contractors (the "**Contractors**") of Knew Sales who are owed, but have not been paid, amounts owing to them by Knew Sales in respect of services provided under the marketing and sales agency agreement, dated January 15, 2015 (the "**Agency Agreement**") prior to January 19, 2016;
  - (iii) Directing that the Hardship Payment be paid to the Contractors by Knew Sales within two business day of receiving the Hardship Payment;
  - (iv) Directing that Knew Sales shall continue to provide services to Primus Canada in accordance with the Agency Agreement and in the ordinary course of business;
  - (v) Directing that Knew Sales shall not take, and shall direct its contractors not to take, any step inconsistent with, or do anything to interrupt or interfere with Knew Sales' obligations under the Agency Agreement; and
- (b) An Order, substantially in the form of the draft order located at Tab 4 of the Motion Record, extending the Stay Period (as defined in paragraph 18 of the Initial Order of the Honourable Justice Penny dated January 19, 2016 (the "**Initial Order**")) until February 26, 2016; and

(c) Such other and further relief as this Court deems just.

## A. BACKGROUND

3. The Primus Entities carry on business in Canada and the United States re-selling telecommunications services.

4. Due to severe liquidity issues caused by, among other things, over-leverage, revenue declines and high capital costs, the Primus Entities are insolvent, being unable to satisfy their obligations to their senior secured lenders (the “**Syndicate**”) as they become due. Unable to successfully restructure their operations or secure replacement financing or investment, and with the formal support of their senior secured lenders, the Primus Entities conducted an extensive sales process to find a purchaser for their business and assets on a going-concern basis. The process culminated in the sales transaction described in greater detail below, an essential condition of which was that the Primus Entities expeditiously seek and obtain protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

5. On January 19, 2016 (the “**Filing Date**”), the Primus Entities sought and obtained protection under the CCAA pursuant to the Initial Order.

6. FTI Consulting Canada Inc. was appointed as monitor of the Primus Entities (the “**Monitor**”) in the CCAA proceedings.

### *The Birch APA*

7. In advance of their filing for CCAA protection, the Primus Entities conducted an extensive sales process to find a purchaser for their business and assets.

8. At the conclusion of the sales process, the Primus Entities determined that, further to and on the basis of their commercial and business judgment, it was in the

best interests of the Primus Entities to pursue the transaction (the "**Transaction**") proposed by Birch Communications Inc. (the "**Purchaser**") and the parties entered into an asset purchase agreement (the "**Birch APA**"), conditional on, among other things, Court approval.

9. The Primus Entities will intend to an order of the Court approving the Birch APA and the Transaction at a hearing initially scheduled for February 17, 2016 and currently scheduled for February 23, 2016 (the "**Sale Approval Order**").

#### **B. KNEW SALES' RELATIONSHIP WITH PRIMUS CANADA**

10. Primus Canada offers a wide selection of residential and business telecommunications services including: internet, voice over internet protocol, hosted private branch exchange, local phone, long distance phone, pre-paid calling cards, and wholesale long distance capacity to smaller telecommunications service providers.

11. Primus Canada markets and sells its residential services through various channels. Among other things, Primus Canada has a 10 year business relationship with Costco Canada ("**Costco**") through which Primus Canada sells services to Costco's warehouse and club members at Costco retail locations. At present, the Primus Entities have a one-year contract with Costco which is assessed on a go-forward basis (the "**Costco Contract**").

12. Rather than hire and manage individual sales people at Costco locations, Primus Canada has engaged Knew Sales to place sales agents at kiosks in Costco locations throughout Canada to sell services to Costco members, pursuant to the Agency Agreement. A copy, redacted to protect commercially sensitive information, of the Agency Agreement is attached hereto as **Exhibit "A"**.

13. I am advised by Ian Klaiman, counsel to Knew Sales, and verily believe, that the sales agents engaged by Knew Sales to provide services to Primus Canada are independent contractors, rather than employees of Knew Sales.

14. The Contractors' sales comprise a significant amount of the Primus Entities' residential new business (or total new sales).

*Compensation to Knew Sales by Primus Canada*

15. Pursuant to the Agency Agreement, Knew Sales is paid a fee based on an hourly wage and a flat fee for every service sold to a Costco warehouse or club member. In turn, Knew Sales is obliged to pay amounts owing to Contractors pursuant to the contracts between Knew Sales and the Contractors.

16. At the end of each month, Primus Canada delivers a written sales report to Knew Sales, which summarizes orders received less chargebacks for cancelled orders.

17. Knew Sales determines the amounts owed by Primus Canada based on the written report and invoices Primus Canada accordingly. Primus Canada then has twenty calendar days to verify and pay the fees detailed in the invoice.

18. Due to the payment structure provided in the Agency Agreement, as at the Filing Date, Primus Canada owed Knew Sales approximately \$327,000 (the "**Knew Sales Prefiling Amounts**"). Pursuant to the Initial Order, Primus Canada is prohibited from paying the Knew Sales Prefiling Amounts.

*The Agency Agreement and the Costco Contract are Essential Contracts*

19. The Birch APA includes a list of contracts which are considered by the Purchaser to be essential to the business (the "**Essential Contracts**").

20. The Costco Contract and the Agency Agreement are each an Essential Contract under the Birch APA.

21. The Primus Entities are responsible for attempting to obtain consent to assignment of all of the Essential Contracts prior to the Sale Approval Order. If any of the Essential Contracts remain outstanding as of the date of return of the Sale Approval Order motion, the Primus Entities must obtain an order of the Court assigning those outstanding agreements.

22. It is a condition precedent to the Birch APA that all of the Essential Contracts be assigned, either by consent, notice or court order, by the date of the closing of the Transaction.

*Knew Sales' Response to the Primus Entities' CCAA Proceedings*

23. On January 31, 2016, Knew Sales advised the Primus Entities that the failure to pay the Knew Sales Prefiling Amounts would cause Knew Sales to cease staffing and operating the marketing and sales teams in Costco. A copy of the January 31 letter is attached hereto as **Exhibit "B"**.

24. The Primus Entities and the Monitor immediately engaged in discussions with Knew Sales regarding its obligation to continue supplying services pursuant to the Agency Agreement and the Initial Order.

25. During these discussions, Knew Sales advised that it did not have the ability to pay the Contractors without payment of the Knew Sales Prefiling Amounts. Specifically, Knew Sales advised that unless such payment was made, Knew Sales would suffer significant financial hardship.

26. Knew Sales also advised that, if it did not pay the Contractors, there was a strong likelihood that the Contractors would quit or cease going to work, which would cause a significant adverse impact on the Primus Entities' business.

27. Knew Sales advised that \$234,512.91 plus HST (the "**Hardship Payment**") of the Knew Sales Prefiling Amounts constituted commission to its Contractors.

28. The effect of a large scale walk-off by the Contractors would have the effect of rendering the Agency Agreement, an Essential Contract, of no value to the Purchaser and could jeopardize the Costco Contract, also an Essential Contract.

*The Need for the Hardship Payment*

29. In order to enable the Primus Entities and the Monitor to assess the situation further and to determine what steps to take, Knew Sales provided the Monitor, on a confidential basis, copies of select financial statements and other information relating to this matter. The Monitor reviewed the information provided by Knew Sales and informed the Primus Entities and their counsel that, based on that information, it appeared that Knew Sales would be unable to pay the amounts owing to Contractors for services provided prior to the CCAA filing in connection with the Agency Agreement unless the Hardship Payment was made. I understand that the Monitor will be filing a report regarding its view.

30. The Primus Entities (and should the Transaction close, the Purchaser) would face great difficulty in finding an alternate service provider on a reasonable timeline. Among other things, on-site sales agents like the Contractors require training in the products, systems and processes of the Primus Entities.

31. The Primus Entities have worked with Knew Sales for several years and have developed a well-refined process with them. Knew Sales has 8 years of experience in delivering this service to the Primus Entities and have in place a management team and support staff providing human resources, training and administrative support. Their services would take months to replace.

32. The loss or compromising of a critical sales channel (and corresponding revenue declines) so close to the Sale Approval Order motion and the closing of the Transaction may have a negative impact on the successful closing of the Transaction.

33. As such, the Primus Entities and the Monitor determined that it was in the best interests of the Primus Entities and their stakeholders to pay the Hardship Payment in order to retain the services of Knew Sales and the Contractors.

34. In return for the Hardship Payment, the Primus Entities have asked Knew Sales to confirm that it will continue to provide services under the Agency Agreement and will do nothing to interrupt or interfere with the staffing of the Costco stores.

35. I have discussed the making of the Hardship Payment with the agent for the Primus Entities' senior secured lenders and have been informed by the agent that there is no objection to the making of the Hardship Payment.

**C. STAY EXTENSION TO FEBRUARY 26, 2016**

36. The Initial Order granted a stay of proceedings up to and including February 18, 2016. At the initial application, the Primus Entities scheduled the hearing for sale approval for February 17, 2016 and intended to seek a stay extension at that time as well. Due to, among other things, scheduling conflicts, the sale approval hearing has been moved to February 23, 2016.

37. The Primus Entities are seeking a one week extension of the Stay Period in order to allow for their motion for the Sale Approval Order to be heard (which motion is returnable February 23, 2016), at which time the Primus Entities expect to seek a longer extension of the Stay Period.

38. I am advised by Natasha MacParland, counsel for the administrative agent of Primus Entities' secured lenders, that the agent is supportive of the stay extension sought herein.

39. The Primus Entities have been working diligently to operate their business, communicate with their stakeholders and work towards the closing of the Transaction during their CCAA proceedings.

40. Based on the Primus Entities' cashflow forecasts the Primus Entities will have sufficient funds to continue to operate through to February 26, 2016. The cashflow forecasts will be attached to the Monitor's report filed in support of this motion.

41. The Primus Entities have acted and continue to act in good faith and with due diligence. I do not believe that any creditor will suffer any material prejudice if the Stay Period is extended to February 26, 2016.

42. The stability provided by the stay of proceedings is critical to the Applicants in order to be able to continue their daily operations and restructuring efforts.

#### D. CONCLUSION

43. The Primus Entities' failure to pay the Hardship Payment will cause significant financial difficulty to Knew Sales and will likely cause a number of Contractors to quit or cease going to work. Such actions will likely have a negative effect on the Primus Entities and could threaten the closing of the Transaction. The failure of the Transaction to close, or to close in a reasonable time period, will have a significant negative effect on the Primus Entities and their stakeholders, including their customers, suppliers and employees.

44. For these reasons, the Primus Entities seek authorization to make the Hardship Payment and a direction that Knew Sales should continue to provide services in the ordinary course.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on February 9, 2016.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
MICHAEL NOWLAN

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**

Proceeding commenced at Toronto

**AFFIDAVIT OF MICHAEL NOWLAN  
(SWORN FEBRUARY 9, 2016)**

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**Lawyers for the Applicants**

**TAB A**

This is Exhibit "A"  
to the affidavit of Michael Nowlan,  
sworn before me on the 9 day  
of February, 2016



---

Commissioner for Taking Affidavits

Peter Stransman, a Commissioner, etc.,  
Province of Ontario, while a ~~Student of Law~~  
Expires April 1, 2017.

## **MARKETING AND SALES AGENCY AGREEMENT ("AGREEMENT")**

This Agreement is dated January 15, 2015 and is between Primus Canada Telecommunications Canada Inc., a federally incorporated company ("Primus Canada Canada") and New Sales Group Inc., an Ontario corporation ("Sales Agency").

### **WHEREAS:**

Primus Canada provides a variety of telecommunications services to residential and business customers, including Internet, home phone and long distance services (the "Primus Canada Services");

Primus Canada has entered into a multi-year agreement with Costco Canada to sell the Primus Canada Services to its warehouse/club members; and

Primus wishes to utilize the services of Sales Agency to staff Costco Canada kiosks located in select Costco warehouses during select business hours to market, promote and sell the Primus Canada Services to Costco Canada warehouse/club members.

The parties therefore agree as follows:

### **1 INTERPRETATION**

**"Confidential Information"** means any and all trade secrets, confidential, private, or secret information of Primus Canada regardless of form and whether or not recorded and the term "Confidential Information" includes without limitation the following information of Primus Canada and its customers, suppliers, licensors and other third parties which may be disclosed or provided to Sales Agency during the term of this Agreement: (i) the Intellectual Property owned or in the possession of Primus Canada including all Intellectual Property contained in or used to produce the Primus Canada Services, (ii) compilations of data, information, and software (including object and source code) embedded in the Primus Canada Services, (iii) pricing, business methods and practices, (iv) information relating to actual or the services and business relationship between Primus Canada and Costco Canada, Primus Canada Services, plans, activities, know-how, research and development, or commercial relationships of Primus Canada, (v) information, Primus Canada Services, specifications, data and software of third persons to whom Primus Canada owes a duty of confidence, (vi) the terms of this Agreement, (vii) personal information as that term is described in section 4.3 and (viii) such information as Primus Canada may from time to time designate as being confidential.

**"Costco Locations"** means the Costco Canada locations set forth in Schedule "A".

**"Costco Members"** means the Costco Canada club/warehouse members who may be approached by a Sales Agent for the purpose of soliciting such person or entity to enter into a Service Application with Primus Canada.

**"Fees"** means the compensation in Canadian currency to be paid by Primus Canada to Sales Agency as set forth in Schedule "A".

**"Incomplete Applications"** means Service Applications submitted by the Sales Agent that are missing information or data necessary for Primus Canada to process and assess a Service Application in order to provide the Primus Canada Services to the Costco Member.

**"Intellectual Property"** means all intellectual and industrial property including without limitation all works in which copyright subsists or may subsist, documentation, text and other literary works, computer programs, designs, industrial designs, trade secrets, confidential information and know-how, trade marks, trade names, discoveries and inventions, and integrated circuit topographies.

**"Intellectual Property Right"** includes all rights in trademarks and trade names, patents, copyrights, industrial design rights, integrated circuit topography rights, rights in trade secrets, confidential information and know-how, and other proprietary rights.

**"Primus Canada Services"** means Primus Canada's telecommunications services offered to the Costco Members, specifically residential Internet, home phone and long distance services.

**"Primus Canada Equipment"** means the computer devices owned by Primus Canada with active wireless telecommunication connection to the Internet, an installed application(s) for processing and/or approval of customer applications for the Primus Canada's products and services.

**"Reports"** means daily reports prepared by the Sales Agency to be made available to Primus Canada weekly as more specifically described in section 2.6.

**"Retail Price List"** is the retail price list for the Primus Canada Services and related products and services provided to Sales Agency by Primus Canada, which Primus Canada may change from time to time in its sole discretion.

**"Sales Agency Services"** means the services to be provided by Sales Agency to Primus Canada pursuant to this Agreement.

**"Sales Agent"** means a Sales Agency representative tasked with sales and operations services within the Costco Location.

**"Service Application"** means the current form of the Primus Canada customer service application, for the provision of Primus Canada Services as set forth in Schedule "B".

**"Service Levels"** are the service levels that the Sales Agency shall observe and maintain as set out in section 2.5.

## **2 OBLIGATIONS OF SALES AGENCY AND PRIMUS CANADA**

### **2.1 General Activity**

2.1.1 Subject to the provisions hereof, Primus Canada hereby appoints the Sales Agency as an authorized marketing representative to solicit Costco Members at Costco Locations exclusively for Primus to enter into a Service Application within the Costco Locations, and Sales Agency agrees to act in that capacity. Sales Agency shall perform all Sales Agency Services hereunder and shall not delegate or subcontract the Sales Agency Services without the prior written consent of Primus Canada.

2.1.2 The Sales Agent shall not attempt to promote or market the Primus Canada Services, or solicit Costco Members to enter into a Service Application with Primus Canada, outside of the Costco Locations. Nothing in this Agreement limits Primus Canada's right to promote, distribute and sell the Primus Canada Services outside of the Costco Locations, directly or indirectly through other third parties. This includes promoting, distributing and selling Primus Canada Services to Costco Members outside of the Costco Locations.

2.1.3 Any negotiations between Primus Canada and a Costco Member regarding a Service Application will be in the exclusive control of Primus Canada.

2.1.4 Primus Canada reserves the right from time to time, in its absolute discretion without incurring any liability to Sales Agency, to change the specifications, features and make modifications to the Primus Canada Services, to alter the prices of the Primus Canada Services, and to discontinue, terminate or limit Service Applications.

## 2.2 Sales Agent not an Employee

Sales Agency acknowledges and agrees that its Sales Agents are not employees of Primus Canada and shall not be entitled to receive from Primus Canada any employment benefits whatsoever. Primus Canada will not be responsible for payment of, and the Sales Agent shall not make a claim against Primus Canada for worker's compensation, health or disability benefits, unemployment insurance, pension plan deductions or other like charges.

## 2.3 Independent Contractors

Nothing herein will in any way constitute the parties as partners, joint ventures, agents, co-owners or otherwise as participants in a joint or common relationship, it being understood that the relationship is solely that of independent contractors. Neither of the parties will be or become liable or bound by any Agreement, representation, act or omission whatsoever of the other party unless specifically provided for in this Agreement.

## 2.4 Sales Agency Obligations

2.4.1 Sales Agency agrees to use its best efforts to solicit Costco Members to enter into Service Applications with Primus Canada. The Service Application will be subject to approval and execution of by Primus Canada, and Primus Canada will have the sole discretion to accept or reject any Costco Member based on service availability, credit worthiness and other factors.

2.4.2 Sales Agency agrees to the following basic requirements in providing the Sales Agency Services: (i) observe the following hours of operation at the Costco Locations, 7 days per week, 11 AM to 7 PM; (ii) ensure staffing of at least one agent per shift; (iii) provide its agents with comprehensive training on sales engagement techniques, qualification of members, Primus Canada Services, application and administrative procedure; and (iv) ensure that each kiosk located at a Costco Location is kept in good working condition; providing all the necessary merchandising elements and sales collateral; (v) distribute judiciously among Costco Members the Primus Canada merchandising elements and sales collateral; and (vi) ensure all Sales Agents will be attired in Primus Canada branded uniform which is provided by Primus Canada.

2.4.3 In performing the Sales Agency Services, the Sales Agent shall only provide Costco Members with retail pricing information consistent with the Retail Price List.

2.4.4 Sales agency will ensure that its Sales Agents shall render the Sales Agency Services to the best of the Sales Agents' ability and in a competent, diligent and professional manner. Sales Agents shall conduct their business in relation to the Primus Canada Services in a professional manner that will reflect favourably on the good name and reputation of Primus Canada and the Primus Canada Services. In particular, Sales Agent shall comply with all applicable laws and regulations in its dealings with Costco Members and Primus Canada and in performing its obligations under this Agreement. Sales Agent shall refrain from engaging in any unfair or deceptive trade practice, unethical business practice, or other practice that could unfavourably reflect upon Primus Canada and the Primus Canada Services.

2.4.5 With the exception of marketing materials made available by Primus Canada to Sales Agent or otherwise available to the public, Sales Agent shall not make any representations or warranties whatsoever regarding or in any way relating to the Primus Canada Services or Primus Canada. In no event shall Sales Agency or any individual Sales Agent have any authority to assume or create any liability or obligation, expressed or implied, on behalf of Primus Canada, and any representation to the contrary shall constitute a material breach of this Agreement. Sales Agent shall not enter into Agreements with respect to the Primus Canada Services, receive funds, accept payments, endorse drafts or checks, establish bank accounts or otherwise deal with Primus Canada's credit. Sales Agent shall not hold itself out as a Primus Canada entity and shall have no authority to sign any document on behalf of Primus Canada. All financial and other obligations associated with Sales Agency's business are the sole responsibility of Sales Agency.

2.4.6 Sales Agency shall not engage in the development, promotion, sale or other marketing of any services competitive with any of the Primus Canada Services which, in Primus Canada's opinion, adversely affects the promotion, sale and marketing of any of the Primus Canada Services, without prior written approval from Primus Canada.

## 2.5 Service Levels

Sales Agency shall maintain and observe the Service Levels described below. In the event that Sales Agency fails to meet all Service Levels in two consecutive months or three non-consecutive months over a twelve (12) month period then Primus Canada may terminate this Agreement on fifteen 30 days written notice provided, however, that Sales Agency may remedy such default by fully meeting all Service Levels during the notice period in which case such notice of termination will be withdrawn.

- i) Sales Agency will maintain staffing (min 1 agent/shift) in 95% of Costco Locations, daily.
- ii) Sales Agency will maintain staffing in 100% of Costco Locations, weekly.
- iii) Sales Agency will ensure sales agents are dressed in Primus Canada approved attire at all times (100% compliance).
- iv) Sales Agency will ensure sales agents have exceptional communications and language skills (100% compliance).
- v) Sales Agency will maintain kiosk in good working condition, reporting within 24 hours, any deficiencies to Primus Canada (This includes kiosk, signage and equipment.)
- vi) Sales Agency will maintain sufficient quantities of Primus marketing and sales collateral (brochures and related materials) for daily operations (100% compliance).
- vii) Sales Agency will provide a dedicated account manager to manage the day-to-day operations and liaise with Primus Canada management team.
- viii) Sales Agency will ensure sales agents have received training and are certified to sell Primus Canada Service. All agents will be trained and certified before working in location and certification is a 90% pass on written exam.
- ix) Sales Agency will maintain an 80% customer satisfaction score rating in all locations (such ratings will be conducted through a quarterly audit mystery shop program).
- x) Sales Agency will agree to meet or exceed sales targets. Sales targets will be set by Primus on a quarterly basis based on key category metrics and sales per hour.
- xi) Sales Agency will provide a supervisor to support each Costco Location at an 8:1 ratio. .
- xii) Sales Agency supervisor will maintain working relationship with each Costco Location management group.
- xiii) In the event that Primus Canada seeks to replace a specific agent, Sales Agency will replace such agent within one week from the date of the Primus Canada request.

## 2.6 Sales Agency Reporting and Quarterly Performance Reviews

- 2.6.1 Sales Agency will maintain daily reporting respect to the Sales Agency Services and presented at an outlet, regional and national level. Every Report shall include and be provided to Primus Canada:
- a) Traffic count, intercepts, applications taken and service description;
  - b) Summaries of key observations, learning and recommendations to improve performance and
  - c) Report metrics may be altered from time to time at the request of Primus management.
- 2.6.2 Sales Agency shall provide to Primus Canada a weekly compilation of every Report, by 5:00 pm Monday for the period covering the proceeding week (or 5:00 pm Tuesday in the event of a statutory holiday).

## 2.7 Indemnity of Sales Agency

- 2.7.1 Sales Agency shall indemnify and defend Primus Canada and its respective officers, directors, shareholders, employees, suppliers, licensors and agents from and against all liabilities, claims and demands whatsoever relating to or arising from (i) any claim made claim against Primus Canada for taxes, payments, remittances or deductions as described in section 2.2 or (ii) any manner of breach, default or failure of Sales Agency or any Sales Agent under this Agreement.

## 2.8 Primus Canada Obligations

- 2.8.1 Primus Canada shall provide Sales Agency with reasonable sales, promotional and other related information concerning the Primus Canada Services at no cost to Sales Agency, including the most recent Retail Price List, but Primus Canada shall be under no obligation to provide Sales Agency with confidential technical data related to the Primus Canada Services.
- 2.8.2 Primus Canada shall supply Primus Canada Equipment to Sales Agency to use in the provision of the Sales Agency Services. Primus Canada shall be responsible for all cost of repairs and maintenance incurred by Sales Agency during the operation of Primus Canada Equipment, provided that such repair and maintenance is not caused by the willful misconduct or gross negligence on the part of Sales Agency or its Sales Agents in the operation of Primus Canada Equipment

## 3 REMUNERATION OF SALES AGENCY

- 3.1 In consideration of the complete and proper fulfillment of Sales Agency's obligations in accordance with the terms and conditions of this Agreement, Primus Canada agrees to pay Sales Agency the fees associated with each Activated Service subscribed further to performance of the Services hereunder, as set forth in Schedule "A" ("Fee(s)"), or as otherwise agreed to by the Parties in writing. The Fees include, unless otherwise agreed to by the Parties in writing, all expenses, charges and costs incurred by Sales Agency in performing the Services. No amount shall be payable hereunder unless it is properly documented. All amounts referred to in this Agreement are in Canadian dollars and are payable in Canadian dollars, unless otherwise agreed to by the Parties in writing.
- 3.2 Notwithstanding anything to the contrary herein, Primus Canada shall, upon thirty days [30] days notice, have the right to modify the Fees structure and/or to increase or reduce any Fees payable to Sales Agency including for performance, competitive and/or marketing reasons or in case of specific promotions implemented by Primus Canada from time to time.
- 3.3 For the purpose of calculating Fees payable, the parties agree that Primus Canada's systems will be the systems of record and only these systems will be used for such calculation. Within (20) twenty

days from the end of each calendar month, Primus Canada shall provide Sales Agency with a written report containing accurate and current information concerning collections, deductions, charges and fees payable with respect to Costco Members whose Service Application has been accepted Primus Canada and is a customer of Primus Canada.

- 3.4 Following the receipt of an acceptable invoice from Sales Agency, Primus Canada shall pay the Fees payable for each calendar month to Sales Agency within (20) twenty days of receipt of invoice.
- 3.5 Primus Canada shall pay Sales Agency all payable Fees by Electronic Fund Transfer payable to Sales Agency and sent to Sales Agency at the address set out in section 7.2 or as Primus Canada may be otherwise directed in writing by Sales Agency; provided that all payments hereunder will be subject to the deduction of withholding and other applicable taxes. Sales Agency shall be responsible for any applicable income, sales, use or other taxes arising out of or in connection with Sales Agency's receipt of the fees.
- 3.6 Primus Canada will also have the absolute right to deduct from fees payable any other amount necessary to offset any such overpayments and other amounts or damages due from Sales Agency to Primus Canada.

#### **4 OWNERSHIP AND CONFIDENTIALITY**

##### **4.1 Ownership of the Primus Canada Services**

This Agreement does not confer upon Sales Agency any right, title or interest in or to any Intellectual Property Right in the Primus Canada Services. Primus Canada may immediately terminate this Agreement in the event Sales Agency disputes or contests, directly or indirectly, the validity, ownership or enforceability of any Intellectual Property Right of Primus Canada in the Primus Canada Services, or counsels, procures or assists any other person to do so.

##### **4.2 Non-Disclosure**

4.2.1 During the term of this Agreement and at all times thereafter, Sales Agency shall maintain the confidentiality of the Confidential Information and, without limiting the generality of the foregoing, Sales Agency shall (i) both during the term of this Agreement and at any time thereafter not disclose any confidential, secret, or private information of Primus Canada including any Confidential Information to any person other than for Primus Canada's purposes without Primus Canada's prior written consent, and (ii) not use any such information for its own purposes or for any purposes other than those of Primus Canada.

4.2.2 The provisions of this section will not apply to information which: (i) was in the public domain at the time of disclosure to Sales Agency; (ii) becomes part of the public domain after disclosure to Sales Agency through no fault of the Sales Agency; (iii) was in the possession of Sales Agency prior to the time of disclosure to Sales Agency without any obligation of confidence or any breach of confidence; (iv) was received after disclosure to Sales Agency from a third party who had a lawful right to disclose such information to Sales Agency; (v) was independently developed by Sales Agency without reference to the confidential information of Primus Canada; or (vi) was ordered to be disclosed by a court, administrative Sales Agency, or other governmental body with jurisdiction over the parties hereto, provided that Sales Agency will first have provided Primus Canada with prompt written notice of such required disclosure and will take reasonable steps to allow Primus Canada to seek a protective order with respect to the confidentiality of the information required to be disclosed. Further, the Sales Agency will promptly co-operate with and assist Primus Canada in connection with obtaining such protective order.

##### **4.3 Privacy**

Sales Agency shall abide by all applicable legislation, including the Personal Information Privacy and Electronic Documents Act, with respect to the security and protection of the privacy of all personal information regarding Costco Members it receives in the course of providing the Services and to comply with Primus Canada's privacy policy, a copy of which can be found at <http://www.primustel.ca/en/residential/legal/privacypolicy.html>. Without limited the generality of the foregoing, Sales Agency will not request personal information beyond what is necessary to fulfill its obligations under this Agreement and the parties will agree in advance what type of personal information is necessary. In the event of a breach or threatened breach of this provision, Sales Agency agrees that the harm suffered by Primus Canada would not be compensable by monetary damages alone and, accordingly, that Primus Canada shall, in addition to other available legal or equitable remedies, be entitled to the issuance of immediate injunctive relief enjoining any breach or threatened breach of Sales Agency's obligations hereunder.

#### 4.4 Hiring Restrictions

During the term of this Agreement and for a period of one year thereafter, Sales Agency and Primus shall not directly solicit, recruit for employment, offer subcontracting opportunities to, or knowingly employ any employee of the other's organization. This restriction does not include the placement of advertisements for employment addressed to the general public.

#### 4.5 Publicity

Sales Agency shall not release any publicity or other advertising in connection with this Agreement without Primus Canada's written consent.

### 5 TERM AND TERMINATION

#### 5.1 Term of Agreement

The term of this Agreement shall commence on the date Primus Canada executes this Agreement (the "Effective Date") and shall continue for a period of one year, subject to earlier termination of this Agreement as set forth in this section 5. The term of this Agreement shall automatically renew for succeeding one year periods unless either party notifies the other of its intention not to renew this Agreement not less than thirty (30) days prior to expiration of the then-current term or unless sooner terminated pursuant to this section 5.

#### 5.2 Termination For Convenience

5.2.1 Primus Canada may terminate this Agreement at any time upon thirty (30) days written notice to Sales Agency.

#### 5.3 Termination for Cause

5.3.1 This Agreement may be terminated by Primus Canada, effective after five (5) days notice to Sales Agency, upon the occurrence of any of the following events: (i) if Sales Agency is in material breach of the terms and conditions of this Agreement or is guilty of any misconduct in connection with or affecting the Primus Canada Services or the business of Primus Canada; (ii) in accordance with the provisions set out in section 2.5; (iii) if any proceeding in bankruptcy, insolvency or other law for the relief of debtors, including the appointment of any receiver, administrative receiver, or trustee or assignment for the benefit of creditors, shall be instituted by or against Sales Agency; or (iv) if Sales Agency is convicted of any criminal offence other than an offence which in the reasonable opinion of Primus Canada does not affect its ability to perform hereunder. (v) Add in change of control i.e. if Agency is sold.

#### 5.4 Effect of Termination

In the event of any termination by Primus Canada, Primus Canada will have no liability to Sales Agency for any termination fee or penalty or any other liability whatsoever, other than payment for Sales Agency Services actually performed and accepted by Primus Canada up to the date of termination.

#### 5.5 Return of Property

Sales Agency shall on the termination of this Agreement, howsoever arising (including termination due to the default of Primus Canada), return any Confidential Information and all instructions, notes, memoranda or records, plans, drawings and all other materials and Intellectual Property of Primus Canada existing or stored in any physical, written, electronic or other form which may have been made by or have come into Sales Agency's possession or control shall be immediately surrendered to Primus Canada and Sales Agency agrees not to make or retain any copies or extracts of any of the foregoing.

### 6 **INSURANCE**

#### 6.1 Insurance

On or before the Effective Date and continuously throughout the Term of this Agreement, Sales Agency shall maintain in force, at its sole expense, at minimum, the insurance coverage described below:

- a) Commercial general liability insurance with a minimum combined single limit of \$5,000,000;
- b) Workers' compensation insurance or any alternative plan or coverage as permitted or required by applicable law;
- c) Professional liability insurance covering the liability for financial loss due to error, omission or negligence as described in this Agreement with a minimum amount of \$1,000,000;
- d) Automotive liability insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage liability;
- e) All Risk" property insurance in an amount equal to the full replacement value of the Client Equipment used to provide the Sales Agency Services; and
- f) Crime insurance policy covering employee dishonesty and computer fraud for loss arising out of or in connection with fraudulent or dishonest acts committed by Sales Agency staff or subcontractors, as well as employees of subcontractors acting alone or in collusion with others, in a minimum amount of \$1,000,000 per loss.

Where applicable, Sales Agency shall add the name of the Primus Canada's additional insured to such insurance policies.

### 7 **GENERAL**

#### 7.1 Limitation of Liability



The laws of Province of Ontario govern all matters arising out of this Agreement. Sales Agency hereby submits to the exclusive jurisdiction of the courts of Ontario for any legal action arising out of this Agreement.

7.4 Severability

If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement, or application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by the unenforceability and will be enforceable to the fullest extent permitted by law.

7.5 Survival

Sections 2.2, 2.7, 3.1.4, 4, 5.4, 5.5 and 7 will survive the termination of this Agreement for any reason.

7.6 Waiver

No amendment of this Agreement will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or non-performance of an obligation under this will be effective unless signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or non-performance of any other obligation.

7.7 Assignment

The Sales Agency may not assign this Agreement or any of its rights or obligations there under, without the prior written consent of Primus Canada. This Agreement will enure to the benefit of the successors and permitted assigns of the parties.

7.8 Entire Agreement

This Agreement constitutes the entire Agreement between the parties relating to the subject matter of this Agreement and supersedes all other oral or written Agreements or policies relating thereto. There are no representations, warranties, terms, conditions, undertakings or collateral Agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

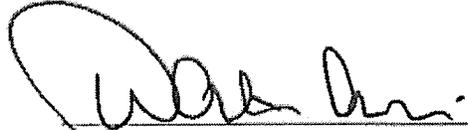
7.9 Counterparts

The parties may sign this Agreement in several counterparts, each of which will be deemed an original but all of together will constitute one instrument.

The parties are signing this Agreement on the date next to its signature below.

**Primus Canada Telecommunications Inc.**

Per:

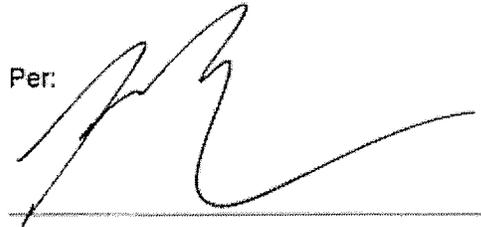
  
Name: Walter Andri

Title: Senior Vice President, Sales

Date: JAN 15/15

**Knew Sales Group Inc**

Per:

  
Name: Michael Koipers

Title: Partner

Date: 01.15.15

**SCHEDULE "A"**

**Fees & Compensation Schedule**

Subject to any subsequent chargeback in case of deactivation or cancellation of the Primus Canada Services by the Subscriber, Sales Agency shall be entitled to receive, (subject to any deduction related to the Order Fulfillment Services, if applicable), the following Fees for each Activated Services:

Fee Payment Type	

For greater clarity, Fees will only be payable to Sales Agency on Activated Services.

**Fee Chargeback Policy**

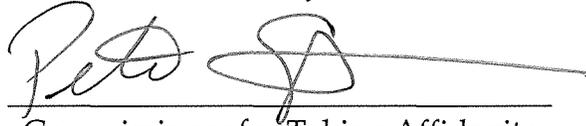
Fees paid to Sales Agency for each Activated Service shall be reimbursed to Primus Canada by Sales Agency the case where the relevant Subscriber elects to deactivate or cancel the Primus Canada Services within [REDACTED] or less following activation of the Activated Services.

	Reimbursement (Chargeback) TO PRIMUS CANADA

In addition, Primus Canada shall have the right to chargeback without limitation, any Fee paid to the Sales Agency on the submission of fraudulent Request Form.

**TAB B**

This is Exhibit "B"  
to the affidavit of Michael Nowlan,  
sworn before me on the 9 day  
of February, 2016



Commissioner for Taking Affidavits

~~Peter Jonathan Stransman, a Commissioner, 612,  
Province of Ontario, while a Student of Law.~~  
Expires April 1, 2017.

## Vlad Calina

---

**From:** Ian Klaiman <IKlaiman@lzwlaw.com>  
**Sent:** Sunday, January 31, 2016 10:06 AM  
**To:** Vlad Calina  
**Cc:** Neil Spivack; mike@knewsales.com; Raquel Aleman  
**Subject:** Knew Sales re: Primus - CCAA  
**Attachments:** Knew Sales Agreement - Jan 15 2015.pdf; AR Listing.pdf

**Importance:** High

Vlad,

We are lawyers for Knew Sales Group Inc. ("Knew Sales") in respect of this matter. Knew Sales is a supplier to Primus and, essentially, staffs and operates Primus' marketing and sales team in Costco stores across Canada. I have attached the Marketing and Sales Agency Agreement between Knew Sales and Primus dated January 15, 2015 for your reference (the "Agreement").

This sales group is comprised of 81 independent contractors, fully dedicated to the Primus program. This team is highly specialized and extensively trained, and has developed over an 8 year span. It has also worked closely with Costco over the last 8 years, and has developed a deep relationship with its store management and staff. This is an invaluable relationship, as Costco is highly selective about the sales teams it allows to operate in its space. It would take at least a year, and likely more, to develop a similar team from scratch.

There is currently a pre-filing balance of \$327,393.00 owing to Knew Sales. I have attached a copy of the aged A/R list as of January 20, 2016 for your reference.

Knew Sales' management has been in contact with Primus, who we understand is supportive in arranging payment to Knew Sales' of its pre-filing arrears. Specifically, Primus recognizes how integral Knew Sales is to its operation, and the value it will be adding to the pending sale to Birch. Knew Sales generates about 500 new customers on a weekly basis, representing about 70% of Primus' new customer base annually.

Knew Sales provides services as an independent contractor. Please refer to s. 2.3 of the Agreement, which expressly provides that Knew Sales is an independent contractor. Furthermore, the pre-filing arrears are related solely to wages and commissions for Knew Sales' staff (see para. 3.1 and Schedule "A" of the Agreement).

As such, in order to pay Knew Sales, Primus can rely on s. 6(a) of the Initial Order:

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee benefits (including, without limitation, any amounts relating to the provision of employee medical, dental and similar benefit plans or arrangements), vacation pay and expenses, **and similar amounts owed to independent contractors**, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; [emphasis added]

On Friday, January 29, 2016, Knew Sales' management had a conference call with Bob Nice and Steven Bissell, amongst others, to discuss the above. We understand that FTI takes the position that the "independent contractors" component

of s. 6(a) of the Initial Order only applies to 11 targeted individuals - due to what Mr. Bissell terms the "Spirit of the Order". As such, FTI has restricted Primus from making arrangements with Knew Sales to address its pre-filing arrears.

We strongly disagree with FTI's position above, as it offends the plain language in s. 6(a) of the Initial Order - which clearly allows Primus to elect to pay pre-filing debts broadly to any and all independent contractors. Had the Applicants intended on specifically targeting 11 individuals, the Initial Order would have expressly provided for same. It is also telling that the Applicants' material as regards the Initial Order is completely silent on s. 6(a), and there is no reference anywhere to 11 targeted individuals. Moreover, we see no requirement anywhere for FTI's pre-approval of distributions under s. 6(a); rather, it is within Primus' discretion to do so by the plain language of the order. With respect, FTI's position regarding the "spirit of the Initial Order" appears baseless.

I would like to set up a call to discuss the above. Are you free this Monday morning at 9:30?

Time is of the essence. The \$327,393.00 pre-filing arrears, largely, represents commissions due to our client's sales team, which can amount to over 50% of their take home pay. Without addressing this issue, a large part of our client's sales team have threatened to "walk-off", which will jeopardize Knew Sales' entire operation.

I look forward to hearing from you on this. Thank you.

**Ian Klaiman B.A. (Hons.), LL.B.**

Lipman, Zener & Waxman LLP

1220 Eglinton Avenue West, Toronto ON, M6C 2E3

T 416 789 0652 x357 | F 416 789 9015

E [iklaiman@lzwlaw.com](mailto:iklaiman@lzwlaw.com)

This message and any attachments are intended only for the addressee(s) and may contain privileged or confidential information. Any unauthorized disclosure is strictly prohibited. If you have received this message in error, please notify us immediately so that we may correct our internal records. Please then permanently delete the original message and any attachments and destroy any copies. Thank you.

**TAB 3**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) WEDNESDAY, THE 10<sup>TH</sup>  
 )  
JUSTICE PENNY ) DAY OF FEBRUARY, 2016  
 )

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**

**ORDER**

**(Re Knew Sales Hardship Payment)**

THIS MOTION, made by 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, PTI, Holdco and Primus Canada, the "**Primus Entities**") for an order, *inter alia*: (i) authorizing Primus Canada to make the Hardship Payment (as that term is defined below); (ii) directing Knew Sales Group Inc. ("**Knew Sales**") to continue to provide its services to Primus Canada in accordance with the parties' marketing and sales agency agreement, dated January 15, 2015 (the "**Agency Agreement**"); and (iii) directing that Knew Sales not to take any step inconsistent with, or do anything to interrupt or interfere with the staffing of the marketing and sales teams at Costco

stores across Canada, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Michael Nowlan sworn February 9, 2016 and the Exhibits attached thereto, the First Report of FTI Consulting Canada Inc., in its capacity as Monitor of the Primus Entities (the "**Monitor**"), dated February 9, 2016, and on being advised that those parties disclosed on the Service List attached to the Motion Record, were served with the Notice of Motion and the Motion Record, and on hearing the submissions of counsel for the Primus Entities Entities, the Monitor and Knew Sales, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Vlad Calina sworn February 9, 2016, filed,

#### **SERVICE**

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

#### **HARDSHIP PAYMENT**

2. **THIS COURT ORDERS** that the Primus Entities are hereby authorized and directed to pay, within two (2) business days of the date of this Order, the amount of \$234,512.92, plus HST, (the "**Hardship Payment**") to Knew Sales, in trust for the contractors of Knew Sales who are owed, but have not been paid, amounts owing to them by Knew Sales in respect of services provided under the Agency Agreement prior to January 19, 2016 (the "**Contractors**").

3. **THIS COURT ORDERS** that the Hardship Payment shall be deposited directly to and held in a separate bank account of Knew Sales and that the Hardship Payment shall not be comingled with any other funds.

4. **THIS COURT ORDERS** that Knew Sales shall distribute the Hardship Payment to the applicable Contractors within two (2) business days of receipt of the Hardship Payment.

5. **THIS COURT ORDERS** that Knew Sales shall, within one (1) business day of making the payments to the Contractors, provide to the Monitor a schedule of payments made to the Contractors, without disclosure of the names of contractors.

#### **CONTINUATION OF SERVICES**

6. **THIS COURT ORDERS AND DIRECTS** that Knew Sales shall continue to provide its services to Primus Canada in accordance with the Agency Agreement and shall continue to provide services in the ordinary course.

7. **THIS COURT ORDERS AND DIRECTS** that Knew Sales shall not take, and shall direct its contractors not to take, any step inconsistent with, or do anything to interrupt or interfere with Knew Sales' obligations under the Agency Agreement.

8. **THIS COURT ORDERS AND DIRECTS** that, notwithstanding anything in paragraphs 6 or 7 of this Order, Knew Sales shall not be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided in accordance with the Agency Agreement on or after the date of the Initial Order of the Honourable Justice Penny dated January 19, 2016. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **GENERAL**

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Primus Entities and the Monitor and their agents in carrying out the terms of this Order. All courts,

tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Primus Entities and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Primus Entities and the Monitor and their agents in carrying out the terms of this Order.

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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

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

Proceeding commenced at Toronto

**ORDER  
(Re Hardship Payment)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

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**Kathryn Esaw** LSUC#: 58264F  
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**Vlad Calina** LSUC#: 69072W  
Tel: (416) 869-5202  
Email: vcalina@stikeman.com  
Fax: (416) 947-0866

**Lawyers for the Applicants**

**TAB 4**

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) WEDNESDAY, THE 10<sup>TH</sup>  
JUSTICE PENNY )  
DAY OF FEBRUARY, 2016

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

STAY EXTENSION ORDER

**THIS MOTION**, made by 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, PTI, Holdco and Primus Canada, the "**Primus Entities**") for an order approving an extension of the stay of proceedings referred to in the Initial Order of the Honourable Justice Penny dated January 19, 2016, to February 26, 2016 was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Michael Nowlan sworn February 9, 2016 and the Exhibits attached thereto, the First Report of FTI Consulting Canada Inc., dated February 9, 2016, in its capacity as Monitor of the Primus Entities (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor and the Bank of Montreal as administrative agent ("**Agent**") for the Bank of Montreal, HSBC Canada and ATB Corporate Financial Service, those other parties present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Vlad Calina sworn February 9, 2016, filed:

**EXTENSION OF THE STAY PERIOD**

1. **THIS COURT ORDERS** that the Stay Period referred to in the Initial Order of the Honourable Justice Penny dated January 19, 2016, is extended until February 26, 2016.

2. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Primus Entities and the Monitor and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Primus Entities and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Primus Entities and the Monitor and their agents in carrying out the terms of this Order.

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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**

Proceeding commenced at Toronto

**STAY EXTENSION  
ORDER**

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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

**MOTION RECORD  
(RETURNABLE FEBRUARY 10, 2016)**

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