# EXHIBIT 6

Part 1

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

| | | |
|---|---|---|
| ROCKSTAR CONSORTIUM US LP AND MOBILESTAR TECHNOLOGIES, LLC<br><br>Plaintiffs,<br><br>v.<br><br>SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, GOOGLE INC.,<br><br>Defendants. | § | Civil Action No. 13-cv-0900-JRG<br><br>**JURY TRIAL DEMANDED** |

**DECLARATION OF KRISTIN J. MADIGAN**
**IN SUPPORT OF DEFENDANTS' MOTION TO STAY OR, IN THE ALTERNATIVE, TO TRANSFER TO THE NORTHERN DISTRICT OF CALIFORNIA**

I, Kristin J. Madigan, hereby declare as follows:

1. I am Of Counsel at Quinn Emanuel Urquhart & Sullivan, LLP, counsel for defendants. I submit this declaration in support of Defendants' Motion To Stay Or, In The Alternative, To Transfer To The Northern District Of California. I have personal knowledge of the following facts, and would competently testify to them if called upon to do so.

2. Attached hereto as Exhibit 1 is a true and correct copy of Robert McMillan, *How Apple and Microsoft Armed 4,000 Patent Warheads*, Wired Enterprise, May 21, 2012.

3. Attached hereto as Exhibit 2 is a true and correct copy of Joff Wild, *Rockstar CEO says he would not bet against further suits to follow those issued last week*, IAM Magazine, November 4, 2013, available at http://www.ip-rockstar.com/Press_Releases/First%20enforcement%20actions%20%E2%80%93%20Intellectual%20Asset%20Management.pdf.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Order Authorizing and Approving (A) The Sale of Certain Patent and Related Assets Free And Clear of All Claims and Interests, (B) The Assumption and Assignment of Certain Executory Contracts, (C) The Rejection of Certain Patent Licenses and (D) The License Non-Assignment and Non-Renewal Protections, *In re Nortel Networks Inc., et al.*, No. 09-10138 (D. Del. July 11, 2011), Docket. No. 5935.

5. Attached hereto as Exhibit 4 is a true and correct copy of a document titled Apple Inc. Form 10-Q Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 25, 2011.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Certificate of Limited Partnership of Rockstar Bidco, LP.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Certificate of Formation of Rockstar Consortium LLC.

8. Attached hereto as Exhibit 7 is a true and correct copy of the Certificate of Limited Partnership of Rockstar Consortium US LP.

9. Attached hereto as Exhibit 8 is a true and correct copy of the Certificate of Formation of MobileStar Technologies LLC.

10. Attached hereto as Exhibit 9 is a true and correct copy of Robert McMillan, *Facebook Infringes My Patents Too, Says CEO Who Just Sued Google*, Wired Enterprise, November 1, 2013.

11. Attached hereto as Exhibit 10 is a true and correct copy of an excerpt from the ip-rockstar.com website page titled "About Rockstar."

12. Attached hereto as Exhibit 11 is a true and correct copy of an excerpt from the ip-rockstar.com website page titled "Innovation."

13. Attached hereto as Exhibit 12 is a true and correct copy of patent assignment record Reel No. 031523, Frame No. 0182-90, from the United States Patent And Trademark Office.

14. Attached hereto as Exhibit 13 is a true and correct copy of an excerpt from the ip-rockstar.com website page titled "Grow together through innovation."

15. Attached hereto as Exhibit 14 is a true and correct copy of a website page from www.LinkedIn.com for "Rockstar Consortium."

16. Attached hereto as Exhibit 15 is a true and correct copy of website pages from www.LinkedIn.com for thirty-three individuals who include "Rockstar Consortium" as their current employer.

17. Attached hereto as Exhibit 16 is a true and correct copy of Joff Wild, *Star Man*, Intellectual Asset Management, July/August 2013, available at http://www.ip-rockstar.com/Press_Releases/IAM%20Rockstar%20Article%20JulyAugust%202013.pdf.

18. Attached hereto as Exhibit 17 is a true and correct copy of a website page from www.LinkedIn.com for Mark Wilson, as accessed on December 19, 2013.

19. Attached hereto as Exhibit 18 is a true and correct copy of a website page from www.LinkedIn.com for Mark Wilson.

20. Attached hereto as Exhibit 19 is a true and correct copy of a website page from www.LinkedIn.com for Michael Dunleavy.

21. Attached hereto as Exhibit 20 is a true and correct copy of an excerpt from the ip-rockstar.com website page titled "Corporate Leaders."

22. Attached hereto as Exhibit 21 is a true and correct copy of Exhibits Q-U to Docket No. 1, *Charter Communications v. Rockstar et. al*., No. 14-0055 (D. Del. Jan. 17, 2014).

23. Attached hereto as Exhibit 22 is a true and correct copy of a website page from www.LinkedIn.com for Don Lindsay.

24. Attached hereto as Exhibit 23 is a true and correct copy of excerpts from the following websites:

www.finnegan.com

www.fisherbroyles.com

www.foley.com

www.harrityllp.com

www.massbbo.org

25. Attached hereto as Exhibit 24 is a true and correct copy of Joff Wild, *Rockstar getting ready to roll . . .*, Intellectual Asset Management, February 19, 2012.

26. Attached hereto as Exhibit 25 is a true and correct copy of a website page from www.LinkedIn.com for Chris Cianciolo.

27. Attached hereto as Exhibit 26 is a true and correct copy of a table from www.uscourts.gov titled "U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending June 30, 2013."

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 21, 2014, at San Francisco, California.

/s/ *Kristin J. Madigan*
Kristin J. Madigan

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record have consented to electronic service and are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on March 21, 2014.

/s/ *J. Mark Mann*
J. Mark Mann

# EXHIBIT 1

http://www.wired.com/wiredenterprise/2012/05/rockstar/all/

Scott Widdowson is a specialist, one of 10 reverse-engineers working full time for a stealthy company funded by some of the biggest names in technology: Apple, Microsoft, Research In Motion, Sony, and Ericsson. Called the Rockstar Consortium, the 32-person outfit has a single-minded mission: It ...

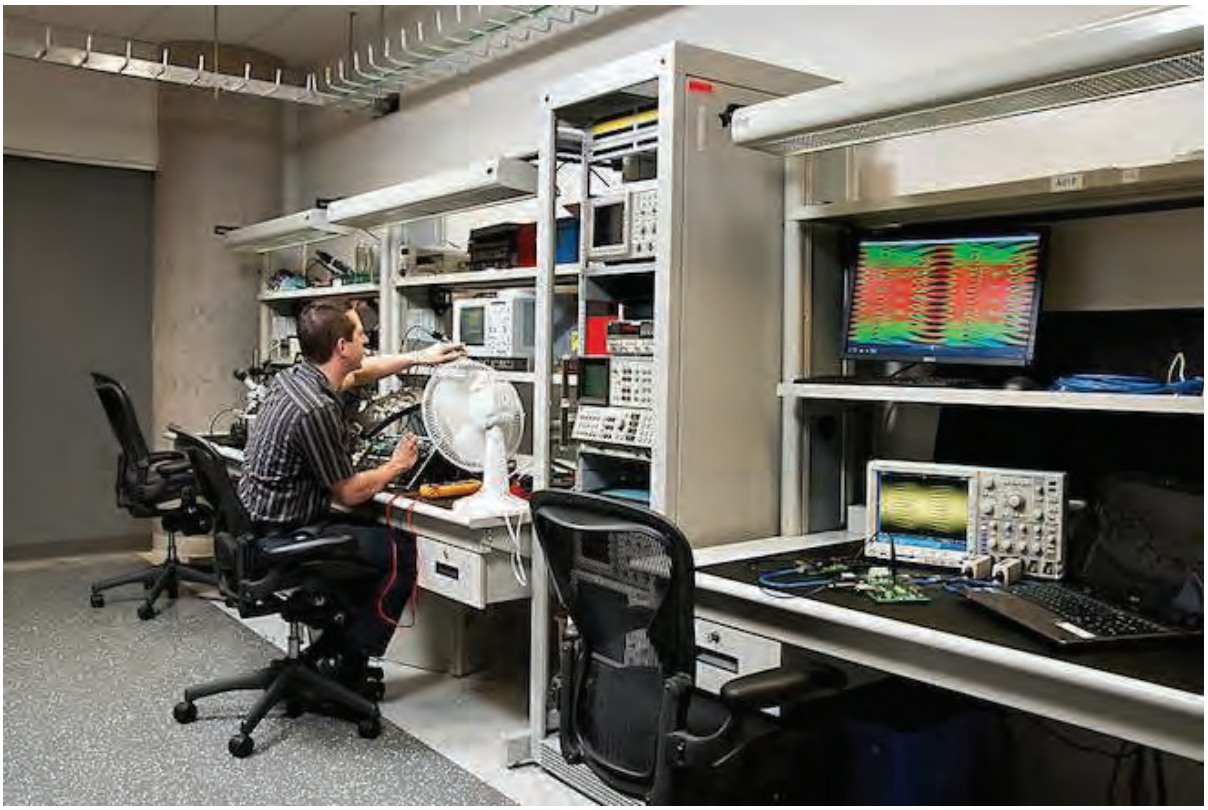




# How Apple and Microsoft Armed 4,000 Patent Warheads

- By Robert McMillan
- 05.21.12
- 6:30 AM





Inside the reverse-engineering lab at Rockstar, Scott Widdowson is looking for products that infringe on the company's 4,000 patents. *Photo: Rockstar*

In many ways, Scott Widdowson is your typical electrical engineer. Most days, when the weather's good, he bikes the 15 miles along the Ottawa River to his company's offices in the west end of the Canadian capital. Once there, he settles in for a day of reading technical specifications, poring over computer textbooks, or prying apart consumer electronics — logic probe in one hand and a soldering

iron in the other.

But Widdowson is a specialist. He's one of 10 reverse-engineers working full time for a stealthy company funded by some of the biggest names in technology: Apple, Microsoft, Research In Motion, Sony, and Ericsson. Called the Rockstar Consortium, the 32-person outfit has a single-minded mission: It examines successful products, like routers and smartphones, and it tries to find proof that these products infringe on a portfolio of over 4,000 technology patents once owned by one of the world's largest telecommunications companies.

When a Rockstar engineer uncovers evidence of infringement, the company documents it, contacts the manufacturer, and demands licensing fees for the patents in question. The demand is backed by the implicit threat of a patent lawsuit in federal court. Eight of the company's staff are lawyers. In the last two months, Rockstar has started negotiations with as many as 100 potential licensees. And with control of a patent portfolio covering core wireless communications technologies such as LTE (Long Term Evolution) and 3G, there is literally no end in sight.

"Pretty much anybody out there is infringing," says John Veschi, Rockstar's CEO. "It would be hard for me to envision that there are high-tech companies out there that don't use some of the patents in our portfolio."

Rockstar has its roots in last year's high-profile auction of 6,000 patents owned by the bankrupt Canadian telco giant Nortel. Google made headlines when it cast the first bid of $900 million for the portfolio, but the search giant was soon in a heated bidding war with a consortium of rivals led by Apple and Microsoft. The final sale price was $4.5 billion, and Rockstar Bidco, as it was then called, was the winner.

"Pretty much anybody out there is infringing, I would think. It would be hard for me to envision that there are high-tech companies out there that don't use some of the patents in our portfolio." — John Veschi

Since then, Rockstar Bidco has given way to a new entity, called Rockstar Consortium. And for the first time, the consortium's strategy for the Nortel patents is clear. Ownership of about 2,000 of the patents was shifted to the individual companies that won the auction: Apple, Microsoft, et al. But the remaining 4,000 have been transferred to Rockstar Consortium, which is now a pure patent exploitation operation funded by all of the winning bidders except EMC, which has dropped out of the picture, according to Veschi.

Rockstar is a special kind of company. Because it doesn't actually make anything, it can't be countersued in patent cases. That wouldn't be the case with Apple or Microsoft if they had kept the patents for themselves. And because it's independent, it can antagonize its owners' partners and customers in ways that its owner companies could not. "The principals have plausible deniability," says Thomas Ewing, an attorney and intellectual property consultant. "They can say with a straight face: 'They're an independent company. We don't control them.' And there's some truth to that."

When the Rockstar Bidco group purchased Nortel's patents, the U.S. Department of Justice took a look at the deal, as part of a broader investigation into several large technology patent sales. The DoJ was concerned that patent attacks might somehow be used to knock Rockstar's competitors out of the smartphone or tablet market. But in February, the DoJ closed its investigation, in part because Microsoft and Apple had promised to license many of their core wireless patents under reasonable terms to anyone who needed them.

But the new company — Rockstar Consortium — isn't bound by the promises that its member companies made, according to Veschi. "We are separate," he says. "That does not apply to us."

Rockstar owners could choose to simply recoup their investment by licensing the patents and then reselling them — much as Microsoft did recently when it bought patents from AOL and then turned around and sold them to Facebook. Or Rockstar could play into the strategic interests of its owner companies by going after Google, and Android partners such as HTC, says Colleen Chien, a law professor at Santa Clara University who has made a study of the market for technology patents.

Microsoft, Ericsson and EMC declined to comment for this story. The other Rockstar owners didn't respond to messages.

To say that technology patents have become more important over the past decade is to risk comic understatement. A patent is essentially a government-sanctioned monopoly designed to give the inventor a two-decade head start to commercialize any new technology. But in practice, patents are weapons. Technology companies load up on patents like Cold War nations stockpiling nuclear bombs, hoarding them for use when an important market is at stake. And few companies have been loading up on patents as aggressively as Apple and Google, two companies that had nothing to do with the smartphone market 10 or 15 years ago when many of Nortel's wireless patents were being developed.

Many companies stockpile patents for defensive purposes, but others actively look for ways they can make money from them — big money. The kind of reverse-engineering practiced by Widdowson happens more often than most people realize. It's just not widely discussed.

"Big companies are doing this work with a combination of their own resources and outsourcing," says Fas Mosleh, senior vice president of IP transactions with Kanzatec, a Los Altos, California, company that sells the type of reverse-engineering services that Widdowson practices in Rockstar's Ottawa lab.

The companies that do this are big because the costs are big. When patent fights go to trial, the legal fees typically run into the millions of dollars. "This is the sport of kings," says Ewing. "Ordinary people can't play in this arena."

But the rewards can be great too. In 2007, a U.S. jury hit Microsoft with $1.5 billion in damages after finding that it violated Lucent's MP3 patents (that verdict was later appealed, and most of the case settled out of court). On Friday, the U.S. International Trade Commission threatened to halt the import of all Motorola Mobility's Android phones and tablets after finding that Motorola had violated a Microsoft patent on how to fire off meeting requests from a mobile device.

## Welcome to Ground Zero

Right now, ground zero for the patent wars is the smartphone market, where everyone from Google, Oracle, Microsoft, and Apple to Motorola, HTC and Samsung are battling it out in the courts. Some companies use patents as a competitive weapon, launching legal wars of attrition against competitors. Others find that they can make big money in some areas without necessarily having to win in the marketplace. Qualcomm makes nearly $4 billion annually licensing its mobile patents. IBM, one of the top patent-holders on the planet, makes over $1 billion each year.

"The creation of these conglomeration of patents — what this does is create a barrier to entry for the little guy." — Julie Samuels

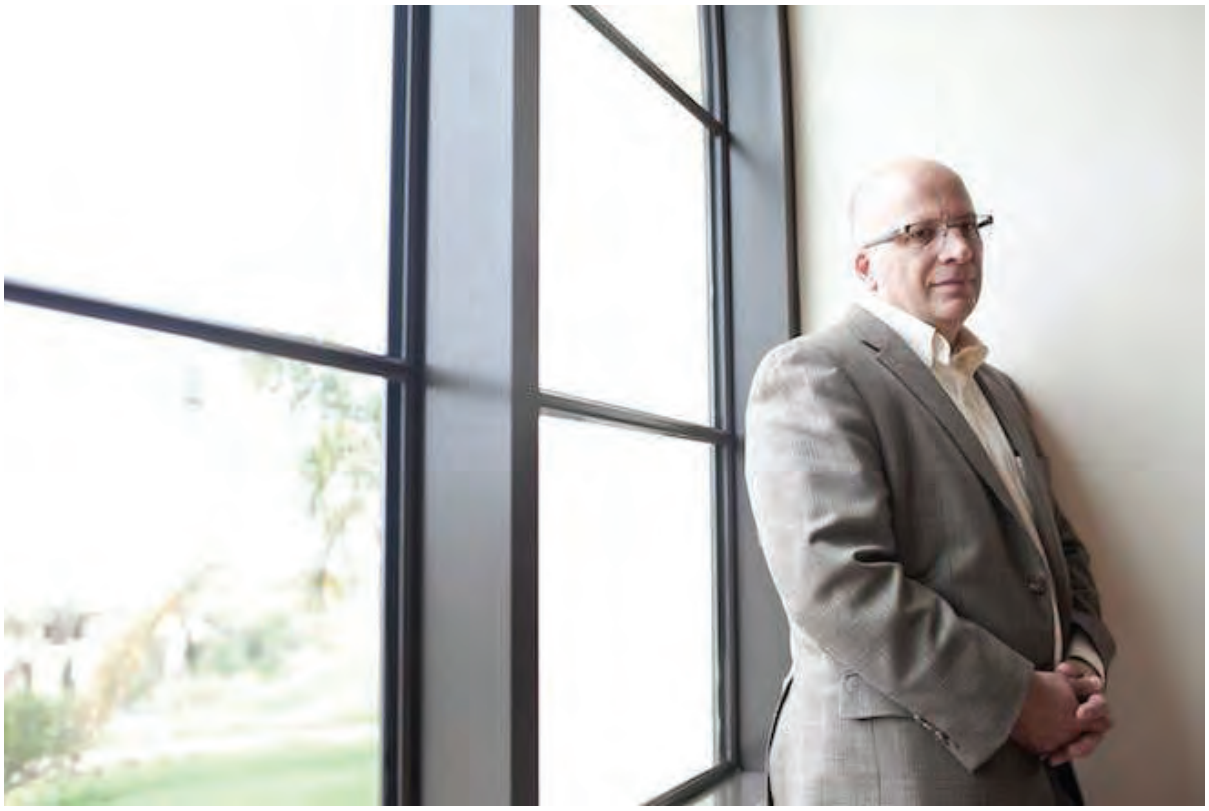
Veschi says that he — and not Rockstar's board of directors — is calling the shots when it comes to licensing deals. The company's mission is "to manage the patent portfolio to achieve a return on investment, probably through a combination of licensing and sales," says Veschi. "So, in some cases, we might be selling some patents, and in other cases, we might be licensing some patents." Rockstar hasn't sued anyone yet, but Veschi expects that to happen too.

Because it doesn't actually produce anything, some knock Rockstar as a straight-up patent troll. "This deal is indicative of a much larger fundamental problem that we see today," says Julie Samuels, a staff attorney with the Electronic Frontier Foundation. She says she hears from small companies regularly who get pressured out of the U.S. market because they simply can't defend themselves against massive patent claims, whether legitimate or not. None of them want to talk to the press, though, for fear of drawing attention — and possibly more legal troubles — to themselves.

Ultimately, Samuels worries that patents — especially software patents — will hurt innovators rather than help them. And that's exactly the opposite of what patents are supposed to do.

"The creation of these conglomerations of patents ... what this does is create a barrier to entry for the little guy," Samuels says. "It makes it so much harder to break into the market if you are a creator or

an innovator."



After surviving the Nortel meltdown, Rockstar CEO John Veschi now controls 4,000 patents. Photo: Dan Krauss/Wired

## Building in the Nortel Crater

With just 32 employees, Veschi's company is tiny, but it has a big legacy. It's the final resting place of the patent portfolio of Canada's most storied technology company, Nortel Networks, a telecommunications giant whose origins date back to 1882 when it was the telephone manufacture and repair department of the Bell Telephone Company of Canada. Three-quarters of Rockstar's employees, including Veschi and Widdowson worked at Nortel and kept their jobs by helping the creditors understand and then sell Nortel's patent portfolio.

Nortel flamed out spectacularly in 2009, in a complex international bankruptcy that cost more than 30,000 employees their jobs, left others without pension and life insurance coverage, and saw several top executives face fraud charges in a trial that's still ongoing.

"How the hell did you guys go bankrupt? Why weren't you Google? Why weren't you Facebook?" — John Veschi

Employee pensions were slashed in half when the company could no longer meet payment obligations. Some workers lost life insurance or medical benefits when the company's self-funded programs collapsed. And they're still hurting three years later, waiting for courts in the United States, Canada, and the United Kingdom to hammer out final bankruptcy settlements, says Anne Clark-Stewart, a spokeswoman with Nortel Retirees and Former Employees Protection Canada, a group representing more than 20,000 former Nortel employees.

But what was a tragedy for the company's employees turned out to be an unprecedented opportunity for Rockstar's investors. Nortel had a massive patent portfolio — nearly 9,000 patents in all — most of them related to computer networking. And according to Veschi, they were high-quality patents — the kind that you'd normally find in a Bell Labs or an IBM; the kind that would be likely to stand up in a court case. Nortel's patents covered broad areas of wireless networking, telecom switching,

internet routers, modems, personal computers, even search and social networking.

"A lot of people are still surprised to see the quality and the diversity of the IP that was in Nortel," he says. "And the fundamental question comes back: 'How the hell did you guys go bankrupt? Why weren't you Google? Why weren't you Facebook? Why weren't you all these things, because you guys actually had the ideas for these business models before they did?' They were within a Bell Labs-y kind of environment, and maybe the wherewithal of turning them into businesses wasn't necessarily there."

Nortel went bankrupt because it was mismanaged and, ultimately, fizzled out in the marketplace. Best known as a maker of telephone-company hardware and corporate phone systems, it once boasted more than 90,000 employees. But it lost out in the data center to Cisco, and it was outmaneuvered in its traditional telecom business by China's Huawei.

## No More Friendly Canadians

When Veschi signed on in 2008, Nortel hadn't done much work to license its intellectual property. It was run by friendly Canadians who didn't want to antagonize partners and customers by suing them. But the company had been remarkably adept at filing patents. "We had huge patent ceremonies in the CTO group that we made a big production of every year," says Gillian McColgan, a former Nortel technical manager who is now chief technology officer with Rockstar.

Nortel's patents sold for $4.5 billion — $1.3 billion more than the combined value of all of the company's business units.

Employees were paid bonuses, and sometimes, they'd join up with senior management at fancy award ceremonies held at swank venues such as the five-star Adolphus Hotel in Dallas, home to Queen Elizabeth II whenever she's in Texas.

Nortel had long patented its inventions, but encouraged by former CEO Mike Zafirovski, it started doing something called "defensive patenting." Engineers were encouraged to file patents that could be used to fire back in the event that someone brought a patent suit against Nortel. "A large focus of our patenting efforts had been around in the pre-bankruptcy era, had been trying to identify what our competitors might do, and laying down inventions in those spaces to protect ourselves," McColgan says.

"We ended up with a large portfolio of patents that are directed toward products and areas of technology that our competitors were working in, where we didn't necessarily have products ourselves," she adds.

When Nortel went belly up, patents representing tens of billions of dollars in research and development were suddenly made available on the open market. It was an unprecedented opportunity for patent buyers. "There had never been anything like it up to this point, not even close," says David Descoteaux, a banker with Lazard, an investment firm that advised Nortel through the bankruptcy.

It wasn't just the quality of the patents that attracted serious investors. It was the sheer volume. Having thousands of high-quality patents to aim at a competitor is a uniquely useful weapon in this new sport of kings.

Patent attorneys love large patent portfolios because they make negotiations easier, says Thomas Ewing, the IP consultant. "When you get to these big numbers … you're not talking about merits anymore. The merit discussion just goes out the window," he says. The reason? Whey you're paying lawyers between $10,000 to $15,000 per patent to drill down and research each patent, it's usually less expensive to cut a licensing deal. "Anything over 200, nobody's talking about merits," he says.

But Google, Apple, and Microsoft saw the same promise as Veschi, and soon, they marshaled forces for a bidding war over Nortel's patent portfolio. When the dust settled, Nortel's patents sold for $4.5 billion — $1.3 billion more than the combined value of all of the company's business units.

## The $4.5 Billion Sales Job

John Veschi and his small team of former Nortel employees had front-row seats to the bidding war. In fact, they deserve a lot of the credit for driving the patent portfolio sale as high as it went.

Veschi is serious and intense. A half-marathon runner who likes to talk, but with a peripatetic way of qualifying his thoughts in mid-sentence. His first job out of school was as an officer at Fort Monmouth, New Jersey, the now-decommissioned Army signals facility that was once the workplace of Julius Rosenberg.

Veschi signed on to run Nortel's licensing business in the summer of 2008 — just six months before the company declared bankruptcy. He had run licensing practices at Lucent and semiconductor maker LSI before Nortel, and he saw a rare opportunity: a vast portfolio of top-quality patents that nobody had yet tried to license.

"I was getting my equity struck at a nice low point and the future was rosy and I could help make it that way. We could be less wimpy about our IP." — John Veschi

He thought it was the perfect time to jump onboard and work on building a licensing business that rivaled Lucent or IBM. "I was getting my equity struck at a nice low point and the future was rosy and I could help make it that way," he said, because "we could be less wimpy about our IP."

What he ended up with was a quick hiring freeze and then, after bankruptcy, the job of analyzing Nortel's 8,500 patents, figuring out which ones should be sold with the company's business units, and which ones could be sold separately at auction. When this job — called the Patent Segmentation Exercise — was done, Veschi had a portfolio of 6,000 patents to put up at auction.

It's a remarkable story. Veschi and his small team ended up riding along with Nortel right through the bankruptcy, and ultimately selling Nortel executives and creditors on the idea that the patents should be split apart from the rest of company's assets and sold separately. That wasn't immediately obvious to some creditors and company executives who thought they could bump up the sale prices of Nortel's business units by rolling in more patents. "It was at the time controversial," says Michael Lasinski, an early ally of Veschi's who worked on a committee for unsecured Nortel creditors during the bankruptcy.

Lasinski was quick to see the value of Nortel's patents because, like Veschi, he'd had some experience in the patent marketplace. He'd worked at the Ocean Tomo Patent Brokerage, a company that had pioneered the idea of Sotheby's-style patent auctions.

Veschi and his team started building financial models. From his time at Lucent, he knew how to show just how much Nortel's patent portfolio could bring in. At first, some executives thought it would be less than a billion dollars. But with Lasinski's support the models showed a lot more money. The team built a database of Nortel's patents and mapped them out to current and emerging networking standards to show where they might play.

Then came the sales job of proving just how valuable these patents were to potential buyers. Google was first out of the gate, with a $900 million stalking horse bid — a bid pre-approved by Nortel's management and creditors aimed at establishing the minimum amount that the patents would sell for in bankruptcy auction.

It didn't take long for others to jump in. At first, Apple, Intel, RIM, and others were interested, as was a patent company called RPX, which buys up patents defensively, so they cannot be used against its investors. By the time the bidding got to $4.5 billion, there were just two groups: Rockstar, and a group called Ranger. Ranger was Intel and Google.

## Does Rockstar Own 4G?

After the Rockstar group acquired the 6,000 Nortel patents, about 2,000 were transferred to the companies behind the consortium. But 4,000 remained with Rockstar the company, which is actively trying to make money from them.

It turned out that Nortel had patents that covered parts of the up-and-coming mobile data technology called Long Term Evolution. Also known as 4G, this is the standard now bringing speedier internet access to mobile phones. Many of those patents are now owned by Rockstar and

could be enforced against mobile phone companies — Google, for example — in the coming months.

“You knew you were making tens or hundreds of millions of dollars’ difference.” — Scott Widdowson

But Nortel’s patents also covered core networking technologies used by routers and switches and many other areas. The European Telecommunications Standards Institute, the standards body for the European telecommunications industry, has a database that lists whose patents may apply to emerging telecommunications standards, and it lists 43 standards areas, many relating to LTE, where Nortel patents — some of them now transferred to Rockstar — are in play.

Close to 25 of Rockstar’s employees are former Nortel workers, including lawyers, managers and engineers. Having longtime Nortel engineers like Widdowson and McColgan — people who know the business and the patent portfolio — is going to help Veschi do a better job in figuring out where to go looking for licensing fees. Widdowson won’t say what he’s working on, by the way, except that it’s related to consumer telecommunications technology.

But that’s not why Widdowson says he stuck it out through the bankruptcy. He was offered another job, and he turned it down.

Former coworkers might have found this a little strange, but it turned out that Widdowson liked the work he was doing. The mesh of the legal and technical work was a new challenge for him, but there was another reason he stuck with it. He felt like he was helping his former Nortel colleagues who were hurting because of the bankruptcy.

McColgan reports a similar story. Even though she had colleagues telling her she was “off her rocker,” she stuck it out with the patent work because she thought she could make a difference and increase the amount paid back to Nortel’s workers.

“You knew you were making tens or hundreds of millions of dollars’ difference,” Widdowson says, “which is not usual for someone who is an engineer.”

**Pages:** 1 2 3 View All

Robert McMillan is a writer with Wired Enterprise. Got a tip? Send him an email at: robert_mcmillan [at] wired.com.

Read more by Robert McMillan

Follow @bobmcmillan on Twitter.



Google Takes Over NASA's Hangar One, a Silicon Valley Icon

This Might Be the Most Beautiful iPad Game of 2014

5 Infographics to Teach You How to Easily Create Infographics in PowerPoint

- HUBSPOT

Post Comment | 81 Comments | Permalink
Back to top

**Comments for this thread are now closed.**

**81 Comments** Wired: Wired Enterprise Login

Sort by Best Share Favorite

**Jesse Petersen** •
This is exactly what's wrong with the patent system.
78 • Share

**Scott Sterling** • 2 years ago
In a free enterprise system, if you legitimately own a patent, what is wrong with asking another company that wants to use your patent to pay a small fee?

Is it complicated and messy? Of course. But what exactly is wrong with it?
8 • Share

**MustBeSaid** • 2 years ago
What's wrong is the over the top time allowance on patents. That you're allowed to patent computer code and businesses processes which are nothing more than a description of a way to produce a desired result. They're a recipe and you can't patent a
recipe.

That the USPTO doesn't do any real work in checking for infringement. They grant moronic patents left and right then leave it up to overpriced lawyers and courts to figure it out. Big companies can afford this, small, medium or individual inventors cannot.Companies are allowed to patent things they have no intention of ever producing just so they can block others who actually spend the time, money and energy to develop those things.You shouldn't be allowed to hold onto a patent without proof that you're actively developing or using that patent for something other than licensing. Before you're allowed to license you should have to at least bring a product to market or show a working, viable prototype that uses that patent.This whole process of sketching some overly simplistic idea on a napkin and getting a patent on it along with a thousand others like it just to sit on it and sue anyone who comes up with the idea and actually uses it should be illegal. Patent trolling should be illegal which is all these "rockstar" guys really are.They and the lawyers that handle these lawsuits produce nothing. They protect nothing probably 90% of the time. Protecting a patent that should have never been granted or should have long since expired is just legal extortion.
61 • Share

**Cowboydroid** • 2 years ago
The thing that is "wrong" with it is that many large corporations are taking advantage of the lax approval process the patent office has had for the last 15ish

Collapse

Previous Article

**Microsoft to Launch Amazon EC2 Rival. Again**

Next Article

**Looking for a Coding Job? Better a Ninja Than a Brogrammer**

# EXHIBIT 2

Intellectual Asset Management

Part of The IP Media Group

iam

blog

## Rockstar CEO says he would not bet against further suits to follow those issued last week

John Veschi was not anticipating headlines about reigniting the smartphone patent wars when he gave the final sign-off on Rockstar's first enforcement actions last week and he was slightly taken aback when they appeared. For the CEO of the NPE that manages many of the patents acquired at the Nortel auction in June 2011, it was a business decision and nothing more. "I am old school when it comes to litigation," Veschi told me when I spoke to him yesterday. "I am reluctant to call in the lawyers, but eventually if you hear from enough people that you need to sue in order to get the attention of their C-suites then that is what you are going to do."

The problem, Veschi explains, is that now that patent litigation has become much more common than it once was many companies will not begin talking unless they are confronted with a suit: "Maybe I am naïve in expecting that it is the quality of the patents that you own that should get you a seat at the negotiating table, but it seems that for many businesses these days in order to be a tier one prospect you need to go to court first." That has certainly been the experience with at least some (though not all) of those that are now being sued by Rockstar in the Eastern District of Texas, he states.

What is important to remember about Rockstar is that it is essentially the continuation of what was previously the Nortel licensing operation – or the one that Veschi would have established if he had been able to see through his plans for the Canadian telecoms company before it entered bankruptcy. Veschi joined Nortel as its chief IP officer in 2008 and by 2009 had already established programmes for both its internet patent portfolio and the one relating to handsets. As a result, he and his team have actually been negotiating with parties for four or five years, not just the two since Rockstar came into being. "The real question is why it took us so long to initiate actions. We didn't and we didn't, but there comes a time when you have to. There is nothing magic about it," Veschi says.

Of course, what makes the Rockstar action last week so newsworthy is the identity of its shareholders – Apple, BlackBerry, Ericsson, Microsoft and Sony. These are five of the six companies that formed the Rockstar Bidco consortium which tabled the successful $4.5 billion bid for the Nortel portfolio in 2011 (the other member, EMC, is not involved). Given the amount they paid and given the on-going issues at least some of them have with both Google and the Android platform, many reports have talked about the consortium going on the attack or have assumed that it is the shareholders that have driven things. This is categorically not the case, Veschi says. "It was entirely my call based on the facts in front of me," he states. "The shareholders got an email telling them what had happened after the suits were issued."

Asked to clarify what the relationship he has with Rockstar's five owners is, Veschi repeats what he told me when I interviewed him for *IAM* magazine earlier this year: "They are the shareholders and there is a relationship that is distant. I understand that it might be sexy to say that they are pulling the strings, but actually it is also slightly insulting to us. We are running the business. We do that job and they do their jobs and that's it."

However, Veschi does note that all five have essentially already paid large licensing fees for the Nortel IP and it would be entirely wrong for them to be disadvantaged for having done that. Others that use IP from the same portfolio should also pay

up, he says. And the fact is that as of right now, not many do. Because of this more suits could well be issued over the coming months. These may well also cover the NetStar and MobileStar franchises that Rockstar has established to cover its internet and handset portfolios, but could also extend to other areas as well – telecoms is one that Veschi mentioned. "We will always prefer not to litigate – and it is right to give people and processes a chance – but I would not bet against it happening," Veschi states.

Where any actions are launched will be closely watched. Last week's were all filed in the Eastern District of Texas. "We gave a lot of thought to fora and it just happened that for a variety of reasons Texas was the best place for these suits," Veschi states (it's worth noting that Rockstar has an office in Plano, which is actually in the Eastern District and which it inherited from Nortel). If and when other suits are filed it could well be that it happens in other parts of the US.

As for the inevitable "troll" accusations that always get thrown around when suits are filed by an NPE, Veschi is comfortable with that. "People will say what they want to say and if they want to think of us as a bad guy then they can. But the sale of the Nortel patents benefited thousands of the company's pensioners. Had there been restrictions on how those patents could now be deployed, they would not have fetched the price they did."

## Sectors

**Licensing, IP litigation, Patents, IP business**

## Comments

**RE: Rockstar CEO says he would not bet against further suits to follow those issued last week**

"What is important to remember about Rockstar is that it is essentially the continuation of what was previously the Nortel licensing operation – or the one that Veschi would have established if he had been able to see through his plans for the Canadian telecoms company before it entered bankruptcy. "

I would be interesting to see if Nortel had already begun the deconstruction process on the Android-based cell phones "prior" to the auction. It's my understanding that Rockstar hired the reverse engineers, not Nortel.

"They are the shareholders and there is a relationship that is distant. I understand that it might be sexy to say that they are pulling the strings, but actually it is also slightly insulting to us."

a) Balderdash and b) did he say "sexy"? No one uses that term in business anymore, that's so 2005,

Just sayin',

IPTT (http://iptrolltracker2.wordpress.com)

Stephanie Kennedy, 898 Data on 04 Nov 2013 @ 12:29

**RE: Rockstar CEO says he would not bet against further suits to follow those issued last week**

Stephanie,

Most of the reverse engineers - and certainly the most senior ones - were part of the Nortel operation prior to Rockstar being launched. They played a key role in the discussions leading up to the auction in 2011. Rockstar now is essentially the Nortel IP team as was, with a few additions.

Balderdash is so 1458!!

Joff

Joff Wild, IAM Magazine on 04 Nov 2013 @ 12:36

**RE: Rockstar CEO says he would not bet against further suits to follow those issued last week**

"Balderdash is so 1458!!"

This from a man who misspells his own first name? KIDDING! =)

OK fine, I'll give you the engineers. But lets examine this, via FOSS:

"Almost two and a half years ago, Google lost the Nortel patents auction to a consortium of six industry leaders (Apple, BlackBerry, EMC, Ericsson, Microsoft, Sony) who just wanted to clear the market before anyone would abuse Nortel's patents, particularly its 4G/LTE patents, the way Google's Motorola Mobility still tries to abuse its standard-essential patents. The price for preventing abuse was $4.5 billion, several times what analysts expected before the auction."

Rockstar's not preventing abuse, it's exacting it...

Cheers,

Steph

Stephanie Kennedy, 898 Data on 04 Nov 2013 @ 13:41

---

# EXHIBIT 3

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| *In re* | Chapter 11 |
| Nortel Networks Inc., *et al.*,[1] | Case No. 09-10138 (KG) |
| Debtors. | Jointly Administered |
| | **RE: D.I. 5202** |

**ORDER AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN PATENT AND RELATED ASSETS FREE AND CLEAR OF ALL CLAIMS AND INTERESTS, (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, (C) THE REJECTION OF CERTAIN PATENT LICENSES AND (D) THE LICENSE NON-ASSIGNMENT AND NON-RENEWAL PROTECTIONS**

Upon the motion, dated April 4, 2011 (the "Motion")[2] of Nortel Networks Inc. ("NNI") and its affiliated debtors, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the "Debtors"), for entry of orders under sections 105, 107(b)(1), 363 and 365 of Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9014 and 9018 and Local Rules 6004-1 and 9018-1 (I)(A) authorizing Debtors' entry into the Stalking Horse Agreement, (B) authorizing and approving the Bidding Procedures and the Bid Protections, (C) approving the

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Nortel Altsystems Inc. (9769), Nortel Altsystems International Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286), Nortel Networks Cable Solutions Inc. (0567) and Nortel Networks (CALA) Inc. (4226). Addresses for the Debtors can be found in the Debtors' petitions, which are available at http://dm.epiq11.com/nortel.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, including the proposed bidding procedures attached thereto, or if not defined in the Motion, shall have the meanings ascribed to such terms in the Sale Agreement (as defined herein).

Notice Procedures and the Assumption and Assignment Procedures, (D) approving the License Rejection Procedures, (E) approving a Side Agreement, (F) authorizing the filing of certain documents under seal, and (G) setting a date for the sale hearing, and (II) authorizing and approving (A) the sale of substantially all of the Debtors' patents and related assets free and clear of all claims and interests, (B) the assumption and assignment of certain executory contracts, (C) the rejection of certain patent licenses and (D) the License Non-Assignment and Non-Renewal Protections (as defined below); and the Court having entered an order approving, among other things, the Bidding Procedures [D.I. 5359] (the "Bidding Procedures Order") based upon the evidence presented at the bidding procedures hearing held on May 2, 2011 (the "Bidding Procedures Hearing"); and the auction held on June 27-30, 2011 (the "Auction") having been held in accordance with the Bidding Procedures Order; and at the conclusion of the Auction, the bid submitted jointly by Apple, Inc. ("Apple") and Rockstar Bidco, LP ("Rockstar" or the "Purchaser") was chosen as the Successful Bid in accordance with the Bidding Procedures; and the Court having conducted a hearing on the Motion on July 11, 2011 (the "Sale Hearing"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the asset sale agreement attached hereto as Exhibit A (the "Sale Agreement"), by and among NNI, Nortel Networks Limited ("NNL"), Nortel Networks Corporation ("NNC"), Nortel Networks UK Limited (in administration), Nortel Networks (Ireland) Limited (in administration), Nortel Networks S.A. (in administration and liquidation judiciaire), Nortel Networks France S.A.S. (in administration) and Nortel GmbH (in administration) and certain other entities identified therein as sellers (collectively, the "Sellers"), the Joint Administrators, the French Liquidator, and the Purchaser and the transactions contemplated thereby (the

"Transactions"), including[3] the granting by the Sellers of any licenses contemplated thereunder; and the Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at the Bidding Procedures Hearing and the Sale Hearing; and upon the record of the Bidding Procedures Hearing and the Sale Hearing and these Chapter 11 Cases, and after due deliberation thereon, and good cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**[4]

A. This Court has jurisdiction over the Motion and the Transactions pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).

B. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory predicates for the relief sought in the Motion are sections 105, 107(b)(1), 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 6004-1 and 9018-1.

D. Notice of the Motion and the Sale Hearing has been provided (a) to (i) all entities reasonably known to have expressed an interest in a transaction with respect to the Assets during the nine (9) months preceding the filing of the Motion, (ii) all entities reasonably known to have asserted any claim, lien, encumbrance or interest in the Purchased Assets, (iii) the counterparties to the Cross-License Agreements and Outbound License Agreements, (iv) the attorneys general for all states in which Purchased Assets owned by the Debtors are located, all federal and state taxing authorities, the Securities and Exchange Commission, the Internal Revenue Service, and

---

[3] For the avoidance of doubt, as used in this Order, the word "including" means "including without limitation".

[4] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

the Department of Labor and similar state labor or employment agencies, (v) all parties entitled to notice pursuant to Local Rule 2002-1(b), (vi) all known creditors of the Debtors, (vii) counsel to the Committee, (viii) counsel to the Bondholder Group and (ix) the additional persons agreed between the Debtors and the Stalking Horse Purchaser to be served in accordance with the terms of the Stalking Horse Agreement; and (b) through publication of the Publication Notice, all in accordance with and as provided by the Bidding Procedures Order.

E. As evidenced by affidavits of publication filed with the Court [D.I. 5465, 5466, 5467, and 5468], notice of the Sale Hearing was published in The Wall Street Journal (National Edition), The Globe and Mail (National Edition), The New York Times (National Edition) and The Financial Times (International Edition) on May 23, 2011.

F. Based upon the affidavits of service and publication filed with the Court [D.I. 5799, 5408, 5413, 5465, 5466, 5467, 5736, 5468 and 5907]: (a) notice of the Motion, the Sale Hearing, the Auction, and the sale of the Purchased Assets (the "Sale") was adequate and sufficient under the circumstances of these Chapter 11 Cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Bidding Procedures Order, and (b) a reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein was afforded to all interested persons and entities.

G. Based upon the affidavits of service and publication filed with the Court [D.I. 5408, 5413, 5465, 5466, 5467, 5468 and 5907]: (a) notice to the counterparties of the Cross-License Agreements and Outbound License Agreements of the License Non-Assignment and Non-Renewal Protections was adequate and sufficient under the circumstances of these Chapter 11 Cases and these proceedings and complied with the various applicable requirements of the

Bankruptcy Code, the Bankruptcy Rules, and the Bidding Procedures Order, and (b) a reasonable opportunity to object and be heard with respect to the License Non-Assignment and Non-Renewal Protections was afforded to all counterparties to the Cross-License Agreements and Outbound License Agreements.

H. The Debtors have complied with the License Rejection Procedures approved by this Court in the Bidding Procedures Order. Based upon the affidavits of service and publication filed with the Court [D.I. 5799, 5408, 5413, 5465, 5466, 5467, 5468 and 5907]: (a) notice to the counterparties to the Unknown Licenses was adequate and sufficient under the circumstances of these Chapter 11 Cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Bidding Procedures Order, (b) a reasonable opportunity to object and be heard with respect to the rejection of any Unknown License and the License Rejection Procedures was afforded to all counterparties to the Unknown Licenses and (c) a reasonable opportunity to make an election under section 365(n)(1) of the Bankruptcy Code was afforded to any counterparties to the Unknown Licenses. The following parties filed timely elections under section 365(n)(1), pursuant to the License Rejection Procedures, with respect to purported Unknown Licenses: AT&T Services, Inc. [D.I. 5584], Broadcom Corporation [D.I. 5587], Hewlett-Packard Company [D.I. 5600], EADS Secure Networks S.A.S. [D.I. 5607], Nokia Corporation [D.I. 5610], International Business Machine Corporation [D.I. 5612], Verizon Communications Inc. [D.I. 5613], Hitachi, Ltd. [D.I. 5614], Motorola Solutions, Inc.[D.I. 5616], Qwest Corporation, Qwest Communications Company, LLC, and Embarq Management Company [D.I. 5618], and Thomas & Betts Manufacturing, Inc. [D.I. 5619]. No other parties timely filed such elections.

I. No further or other notice beyond that described in the foregoing Paragraphs E, F, G and H is required in connection with the Transactions.

J. The Assets (as defined in the Sale Agreement), the licenses under the Jointly Owned Patents, Specified UK Patents, Undisclosed Patent Interests and any other Patents granted by the Sellers to the Purchaser pursuant to the Sale Agreement, and, effective upon receipt by the Sellers of the applicable Exercise Price pursuant to Section 5.19 of the Sale Agreement, any Undisclosed Patent Interest, sought to be transferred, granted and/or assigned by the Debtors to the Purchaser pursuant to the Sale Agreement (the "Purchased Assets") are property of the Debtors' estates and good and valid title thereto is vested in the Debtors' estates. Together with the other Sellers, the Debtors own all right, title and interest to the Purchased Assets.

K. As demonstrated by (a) the testimony and other evidence proffered or adduced at the Sale Hearing and (b) the representations of counsel made on the record at the Sale Hearing, the Debtors and their professionals marketed the Purchased Assets and conducted the marketing and sale process as set forth in and in accordance with the Motion. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Purchased Assets.

L. On or about April 4, 2011, the Sellers, the Joint Administrators, the French Liquidator and Ranger Inc. (the "Stalking Horse Purchaser") and Google Inc. entered into the Stalking Horse Agreement, subject to higher and better offers.

M. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders. The Debtors undertook substantial marketing efforts, and conducted the sale process (including the Auction) without collusion and in accordance with the Bidding

Procedures. The Debtors (a) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Purchased Assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Purchased Assets and (c) considered any bids submitted on or before the Bid Deadline.

N. The Purchaser submitted a bid in accordance with the Bidding Procedures Order. Prior to the Auction, the Debtors, in consultation with their advisors, the Committee, the Bondholder Group, the Monitor, and the Joint Administrators, analyzed Apple's bid and Rockstar's bid and determined that each was a Qualified Bid and that each of Apple and Rockstar was a Qualified Bidder eligible to participate in the Auction. During the Auction, with the consent of the Debtors, in consultation with their advisors, the Committee, the Bondholder Group, the Monitor, and the Joint Administrators, Apple partnered with the original Rockstar Bidco, LP consortium and adopted the transaction structure of the original Rockstar Bidco, LP consortium (including using the Purchaser as the purchaser of the Purchased Assets). At the conclusion of the Auction, in accordance with the Bidding Procedures Order, the Debtors determined, in consultation with their advisors, the Committee, the Bondholder Group, the Monitor, and the Joint Administrators, in a valid and sound exercise of their business judgment, that the highest and best Qualified Bid was the joint bid submitted by Apple and the original Rockstar Bidco, L.P. consortium and that the Purchaser was the Successful Bidder.

O. Subject to the entry of this Order, each Debtor that is a Seller (a) has full power and authority to execute the Sale Agreement and all other documents contemplated thereby, (b) has all of the power and authority necessary to consummate the Transactions contemplated by the Sale Agreement and (c) has taken all company action necessary to authorize and approve

the Sale Agreement and all other documents contemplated thereby, the Sale and the consummation by the Debtors of the Transactions. No consents or approvals, other than those expressly provided for in the Sale Agreement or this Order, are required for the Debtors to close the Sale and consummate the Transactions.

P. The Sale Agreement and the Transactions were negotiated and have been and are undertaken by the Debtors and the Purchaser at arm's length without collusion or fraud, and in good faith, within the meaning of section 363(m) of Bankruptcy Code. The Purchaser is purchasing the Purchased Assets in good faith and the Purchaser has otherwise proceeded in good faith in connection with these proceedings in that *inter alia*: (a) the Debtors were free to deal with any other party in connection with the sale of the Purchased Assets; (b) the Purchaser complied with the provisions in the Bidding Procedures Order; (c) the selection of the Purchaser as the Successful Bidder was the result of the competitive bidding process set forth in the Bidding Procedures Order; (d) no common identity of directors or controlling stockholders exists between the Purchaser and any of the Debtors; (e) the Purchaser in no way induced or caused the chapter 11 filings by the Debtors; and (f) all payments to be made by the Purchaser in connection with the Sale have been disclosed. As a result of the foregoing, the Debtors and the Purchaser are entitled to and shall have the protections of section 363(m) of the Bankruptcy Code.

Q. The total consideration provided by or on behalf of the Purchaser for the Assets and any related licenses is fair and reasonable and is the highest and best offer received by the Sellers, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession

thereof, or the District of Columbia, for the Assets. The sale of the Assets to the Purchaser may not be avoided under section 363(n) of the Bankruptcy Code or any other section of the Bankruptcy Code or applicable non-bankruptcy law. No person or entity or group of persons or entities has offered to purchase the Assets pursuant to the Bidding Procedures established by this Court in a transaction that would provide greater value to the Sellers than the Transactions. The Court's approval of the Motion, the Sale Agreement, and all other documents contemplated thereby is in the best interests of the Debtors, their estates, their creditors and all other parties in interest.

R. The transfer of the Debtors' right, title and interest in the Purchased Assets to the Purchaser will be a legal, valid, enforceable and effective transfer of the Purchased Assets, and, except for the Assumed Liabilities, Permitted Encumbrances, the Standards Obligations (as defined below), as provided for in the Nokia Agreement (as defined below) and as provided in Sections 2.1.1(a) and 5.21 of the Sale Agreement, will vest the Purchaser with all of the Debtors' right, title and interest of, in and to the Purchased Assets, free and clear of (i) all claims as defined in section 101(5) of the Bankruptcy Code, including all rights or causes of action (whether in law or in equity), obligations, demands, restrictions, indemnities, consent rights, options, contract rights, covenants and interests of any kind or nature whatsoever, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, and whether imposed by agreement, understanding, law, common law, statutory law, equity or otherwise (collectively, the "Claims"), (ii) all Interests (as defined herein) of any kind or nature whatsoever and (iii) all Excluded Liabilities (as defined in the Sale Agreement).

S. The Purchaser would not have entered into the Sale Agreement and would not consummate the Transactions, thus adversely affecting the Debtors, their estates and their

creditors, if the sale of the Purchased Assets to the Purchaser and the assumption of the Assumed Liabilities set forth in the Sale Agreement by the Purchaser were not free and clear of all liens, claims and interests pursuant to section 363(f) of the Bankruptcy Code, or if the Purchaser would, or in the future could, be liable for any of such liens, claims and interests. A sale of the Purchased Assets other than one free and clear of all liens, claims and interests would yield substantially less value for the Debtors' estates, with less certainty, than the Sale. Therefore, the Sale contemplated by the Sale Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

T. The Debtors may sell the Purchased Assets free and clear of all Claims and Interests, because, with respect to each creditor asserting a Claim or Interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Claims and Interests who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims or Interests that did object and the Claims and Interests held by such holders, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

U. A sale of the Purchased Assets that does not include the License Non-Assignment and Non-Renewal Protections would yield less value for the Debtors' estates, with less certainty, than the Sale. Therefore, the Sale contemplated by the Sale Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest. The Purchaser would not have entered into the Sale Agreement, and the Purchaser would not consummate the Transactions, without the License Non-Assignment and Non-Renewal Protections.

V. Neither the Debtors nor the Purchaser, or any of their respective affiliates and representatives engaged in any conduct, or failed to take any action, that would cause or permit the Sale Agreement or the consummation of the Transactions to be avoided, or costs or damages to be imposed, or any other amounts to be recovered against any of them jointly or severally, under section 363(n) of the Bankruptcy Code.

W. The Sale Agreement and the agreements contemplated thereby were not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchaser has entered into the Sale Agreement or any agreement contemplated thereby or is consummating the Sale with any fraudulent or otherwise improper purpose.

X. The Purchaser is not holding itself out to the public as a continuation of the Debtors and is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders existed between the Purchaser and any of the Debtors. Pursuant to the Sale Agreement, the Purchaser is not purchasing all of the Debtors' assets. The conveyance of the Purchased Assets pursuant to the Transactions does not amount to a consolidation, merger or de facto merger of the Purchaser and the Debtors and/or Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors, there is no continuity of enterprise between the Debtors and the Purchaser, the Purchaser is not a mere continuation of the Debtors or the Debtors' estates, and the Purchaser does not constitute a successor to the Debtors or the Debtors' estates. Upon the Closing, the Purchaser shall be deemed to have assumed only those liabilities that it agreed to assume in the

Sale Agreement. Except for such liabilities assumed by the Purchaser under the Sale Agreement, the Purchaser's acquisition of the Purchased Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing, to the extent permitted by applicable law. The Purchaser's operations shall not be deemed a continuation of the Debtors' business as a result of the acquisition of the Purchased Assets. The Court finds that the Purchaser would not have acquired the Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" theories.

Y. The Debtors have demonstrated that it is a good and sufficient exercise of their sound business judgment to seek the License Non-Assignment and Non-Renewal Protections and that such relief is in the best interests of the Debtors, their estates, their creditors, and all parties in interest.

Z. The Debtors have demonstrated that it is a good and sufficient exercise of their sound business judgment to have the right to assume and assign the Assumed and Assigned Contracts to the Purchaser in connection with the consummation of the Sale and therefore is in the best interests of the Debtors, their estates, their creditors, and all parties in interest. The right to assign the Assumed and Assigned Contracts to the Purchaser is an integral part of the Purchased Assets being purchased by the Purchaser, and accordingly is reasonable and enhances the value of the Debtors' estates. The Cure Costs required to be paid pursuant to section 365(b) of the Bankruptcy Code to the counterparty to the applicable Assumed and Assigned Contract, or as ordered to be paid by this Court pursuant to a final order, are deemed to be the entire cure obligations due and owing under the Assumed and Assigned Contracts under section 365 of the Bankruptcy Code and no further amounts will be required to be paid.

AA. The Debtors have not designated any contracts as Assumed and Assigned Contracts on or prior to the date of this Order.

BB. Each and every provision of the Assumed and Assigned Contracts or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any Assumed and Assigned Contract has been satisfied or are otherwise unenforceable under section 365 of the Bankruptcy Code.

CC. The Purchaser has demonstrated adequate assurance of future performance of all Assumed and Assigned Contracts within the meaning of section 365 of Bankruptcy Code.

DD. Upon the assignment and Sale to the Purchaser, the Assumed and Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in the Assumed and Assigned Contracts or other restrictions prohibiting assignment or transfer.

EE. Entry into the Sale Agreement, the agreements contemplated thereby and consummation of the Transactions constitute a good and sufficient exercise by the Debtors of their sound business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest. The Court finds that the Debtors have articulated both (a) good, sufficient, and sound business purposes and justifications and (b) compelling circumstances for the Sale of the Purchased Assets to the Purchaser pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization. Additionally, (a) the Sale Agreement constitutes the highest and best offer for the Purchased Assets; (b) the Sale Agreement and the Closing will present the best opportunity to realize the value of the Purchased Assets and avoid further decline and devaluation of the Purchased Assets; (c) there is risk of

deterioration of the value of the Purchased Assets if the Sale is not consummated promptly; and (d) the Sale Agreement and the Closing will provide a greater recovery for the Debtors' creditors than would be provided by any other presently available alternative.

FF. The sale and assignment of the Purchased Assets outside of a plan of reorganization pursuant to the Sale Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan for the Debtors. The Sale does not constitute a *sub rosa* chapter 11 plan.

GG. The Debtors have, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code. Accordingly, appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.

HH. Time is of the essence in consummating the Sale. In order to maximize the value of the Debtors' assets, it is essential that the Sale occur within the time constraints set forth in the Sale Agreement. Accordingly, there is a cause to lift the stay contemplated by the Bankruptcy Rules 6004(h) and 6006(d).

II. There is no legal or equitable reason to delay the Transactions.

JJ. The Schedules to the Sale Agreement contain substantial sensitive commercial information, which would be damaging to the Debtors and the Purchaser if such information were to be disclosed to their competitors. Filing the Schedules to the Sale Agreement under seal or refraining from filing the Schedules to the extent they are substantially similar to the Stalking Horse Agreement schedules filed under seal is in the best interests of the Debtors, their estates, creditors and other parties-in-interest; and it is therefore:

**ORDERED ADJUDGED AND DECREED THAT:**

1. The relief requested in the Motion is **GRANTED**.

2. All objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled or otherwise dealt with as expressly provided herein or on the record at the Sale Hearing, and all reservations of rights included therein, are hereby overruled on the merits, with prejudice. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with the Bidding Procedures Order, section 102(1) of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9014.

3. Pursuant to sections 105, 363 and 365 of Bankruptcy Code, and subject to the approval of the Sale by the Ontario Superior Court of Justice in the Canadian Proceedings with respect to the Canadian Debtors, the Sale Agreement, the agreements contemplated thereby, the Sale of the Purchased Assets, and consummation of the Transactions are hereby approved and the Debtors are authorized to enter into the Sale Agreement and to comply with the Sale Agreement and the ancillary agreements contemplated thereby.

4. Pursuant to section 365 of the Bankruptcy Code, notwithstanding any provision of any Assumed and Assigned Contracts or applicable non-bankruptcy law that prohibits, restricts, or conditions the assignment of the Assumed and Assigned Contracts, the Debtors are authorized to assume and to assign the Assumed and Assigned Contracts to the Purchaser, which assignment shall take place on and be effective as of the Closing, or as otherwise provided by order of this Court. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Assumed and Assigned Contracts. Notwithstanding the foregoing, unless required by the Purchaser under the Sale Agreement, no Debtor shall be required by the Court to assume and assign any Assumed and Assigned Contracts, and, if no such assumption and

assignment occurs, no Cure Costs shall be due and no adequate assurance of future performance shall be required.

5. [Reserved]

6. The Debtors' assumption of the Assumed and Assigned Contracts is subject to the consummation of the Sale of the Purchased Assets to the Purchaser. To the extent that an objection by a counterparty to any Assumed and Assigned Contract, including an objection related to the applicable Cure Cost, is not resolved prior to the Closing Date, the Debtors, in consultation with the Purchaser, may, without any further approval of the Court or notice to any party, elect to (a) not assume such Assumed and Assigned Contract, or (b) postpone the assumption of such Assumed and Assigned Contract until the resolution of such objection. Any Cure Costs outstanding on the Closing Date shall be paid to the appropriate counterparty as a condition subsequent to such assumption and/or assumption and assignment of the relevant Assumed and Assigned Contract.

7. Effective as of the Closing, the Unknown Licenses are rejected. Counterparties to the rejected Unknown Licenses have no rights against the Purchaser or the Purchased Assets with respect to such Unknown Licenses except to the extent that both (a) such counterparty made a timely election on or before June 6, 2011 under section 365(n)(1)(B) in accordance with the License Rejection Procedures approved by this Court in the Bidding Procedures Order and (b) neither the Debtors, the Purchaser, nor any other party in interest has objected to such election or the Court has determined by Final Order that the election was proper. To the extent that a counterparty to an Unknown License retains rights under a contract with a Debtor upon the satisfaction of (a) and (b) of this paragraph, such rights shall not be greater than the rights retained under section 365(n) of the Bankruptcy Code. Any counterparty to a rejected Unknown

License that has not made an election on or before June 6, 2011 shall have the right to file a rejection damages claim against the applicable Sellers, subject to all applicable deadlines and the allowance of such claim under applicable law, and no other rights, remedies or claims, including no rights, remedies, or claims against the Purchaser or the Purchased Assets. For the avoidance of doubt, the licenses granted under the Subject Agreements (as defined in section 2 of the Commercial License Acknowledgement attached hereto as Exhibit B) shall constitute Commercial Licenses under the Sale Agreement.

8. Upon the Closing (and in the case of any Undisclosed Patent Interests, subject to receipt by the Sellers of the applicable Exercise Price pursuant to Section 5.19 of the Sale Agreement), (a) the Debtors are hereby authorized to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer and assignment of the Debtors' right, title and interest in the Purchased Assets to the Purchaser free and clear of any and all Claims and interests pursuant to sections 363 and 365 of the Bankruptcy Code including all liens, including any and all liens (statutory or otherwise), Lien (as defined in the Sale Agreement), mortgage, pledge, security interest, charge, right of first refusal, hypothecation, encumbrance, collateral assignment, easement, encroachment, right-of-way, restrictive covenant, rights of offset or recoupment, lease or conditional sale arrangement (collectively, the "Liens") and debts, liabilities, obligations, contractual rights and claims and labor, employment and pension claims, in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or un-matured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding,

law, equity or otherwise (collectively, the "Liabilities" and together with the Liens, the "Interests") other than (i) the Assumed Liabilities, (ii) the Permitted Encumbrances, (iii) to the extent valid and enforceable under applicable non-bankruptcy law, any promises, declarations and commitments granted, made or committed in writing by the Sellers (or made on the Sellers' behalf by any of their Affiliates and legally binding upon the Sellers) in writing to standard-setting bodies and industry groups (including any written commitments, declarations and promises that were made by or on behalf of the Sellers to the members or participants thereof, but solely in connection with the standard-setting activities of such bodies or groups and solely to the extent legally valid and enforceable under applicable non-bankruptcy law) concerning the licensing of or the grant of rights with respect to the use of any of the Transferred Patents, Purchased Specified UK Patents, Undisclosed Patent Interests or Jointly Owned Patents acquired pursuant to the Sale Agreement (including those legally valid and enforceable commitments contained in the membership agreements, by-laws or policies of the standard-setting bodies and industry groups), whether or not listed in Section 1.1(g) of the Sellers Disclosure Schedule (the "Standards Obligations"), (iv) as provided for in that certain letter agreement dated as of the date hereof between the Sellers and the Purchaser with respect to Nokia Corporation (the "Nokia Agreement") and (v) as provided in Sections 2.1.1(a) and 5.21 of the Sale Agreement, with such interests to attach to the sale proceeds in the same validity, extent and priority as existed with respect to the Purchased Assets immediately prior to the Transactions, subject to any rights, claims and defenses of the Debtors and other parties in interest, and (b) except for (i) the Assumed Liabilities, (ii) the Permitted Encumbrances, (iii) the Standards Obligations, (iv) as provided for in the Nokia Agreement and (v) as provided in Sections 2.1.1(a) and 5.21 of the

Sale Agreement, all such Interests shall be and hereby are released, terminated and discharged as to the Purchaser and the Purchased Assets.

9. Except with respect to enforcing the terms of the Sale Agreement, the Bidding Procedures Order or this Order, no person shall take any action to prevent, enjoin or otherwise interfere with the consummation of the Sale of the Purchased Assets and the Transactions, including the transfer to the Purchaser of the Debtors' title to and the right to use and enjoy the Purchased Assets.

10. The transfer of the Debtors' right, title and interest in the Purchased Assets to the Purchaser pursuant to the Sale Agreement shall be, and hereby is deemed to be, a legal, valid, enforceable and effective transfer of the Debtors' right, title and interest in the Purchased Assets, and vests with or will vest in the Purchaser all right, title and interest of the Debtors in the Purchased Assets, free and clear of all Claims and Interests of any kind or nature whatsoever (other than the Permitted Encumbrances, the Standards Obligations and the Assumed Liabilities, as otherwise provided in Sections 2.1.1(a) and 5.21 of the Sale Agreement and as provided in the Nokia Agreement), with any Interests attaching to the sale proceeds in the same validity, extent and priority as existed with respect to the Purchased Assets immediately prior to the Transactions, subject to any rights, claims and defenses of the Debtors and other parties in interest.

11. Upon the Closing, and except for the Assumed Liabilities, the Permitted Encumbrances, the Standards Obligations, as otherwise provided in the Sections 2.1.1(a), 5.8(c) and 5.21 of the Sale Agreement and as provided in the Nokia Agreement, the Purchaser shall not be liable for any Claims against, Interests against or in or obligations of, the Debtors or any of the Debtors' predecessors or Affiliates, as a result of having purchased the Purchased Assets or

otherwise as a result of the Transactions. Without limiting the generality of the foregoing, (a) the Purchaser shall have no liability or obligation to pay wages, bonuses, severance pay, benefits (including contributions or payments on account of any under-funding with respect to any pension plans) or make any other payment to employees of the Debtors, (b) the Purchaser shall have no liability or obligation in respect of any employee pension plan, employee health plan, employee retention program, employee incentive program or any other similar agreement, plan or program to which any Debtors are a party (including liabilities or obligations arising from or related to the rejection or other termination of any such plan, program agreement or benefit), (c) the Purchaser shall in no way be deemed a party to or assignee of any such employee benefit, agreement, plan or program, and (d) all parties to any such employee benefit, agreement, plan or program are enjoined from asserting against the Purchaser any Claims or Interests arising from or relating to such employee benefit, agreement, plan or program.

12. As of the Closing, subject to the provisions of this Order, the Purchaser shall succeed to the entirety of Debtors' rights and obligations in the Assumed and Assigned Contracts first arising and attributable to the time period occurring on or after the Closing and shall have all rights thereunder.

13. Upon Closing, (a) all defaults (monetary and non-monetary) under the Assumed and Assigned Contracts through the Closing shall be deemed cured and satisfied in full through the payment of the Cure Costs; (b) no other amounts will be owed by the Debtors, their estates or the Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period before Closing with respect to the Assumed and Assigned Contracts, and (c) any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtors, their estates, or the Purchaser or the Purchased Assets that any additional amounts are

due or defaults exist under the Assumed and Assigned Contracts that arose or accrued, or relate to or are attributable to the period before the Closing. The Purchaser's promise pursuant to the terms of the Sale Agreement to pay the Cure Costs and to perform the obligations under the Assumed and Assigned Contracts after the Closing shall constitute adequate assurance of its future performance under the Assumed and Assigned Contracts being assigned to it within the meanings of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

14. Upon assumption of the Assumed and Assigned Contracts by the Debtors and assignment to the Purchaser, the Assumed and Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in the contracts or other restrictions prohibiting assignment or transfer. To the extent any executory contract or unexpired lease is assumed and assigned to the Purchaser under the Order, no executory contract or unexpired lease will be assumed and assigned pursuant to this Order until the Closing. Furthermore, other than Assumed and Assigned Contracts, no other Contract shall be deemed assumed by and assigned to the Purchaser pursuant to section 365 of the Bankruptcy Code. The failure of the Debtors or Purchaser to enforce at any time one or more terms or conditions of any Assumed and Assigned Contract shall not be a waiver of such terms or conditions, or of the Debtors' and the Purchaser's rights to enforce every term and condition of the Assumed and Assigned Contracts.

15. The Transactions have been undertaken by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Purchased Assets as that term is used in section 363(m) of Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to

the Purchaser. The Purchaser is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

16. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors and the Purchaser are each hereby authorized to take any and all actions, including the payment of any fee or cost, necessary or appropriate to: (a) consummate the Sale of the Purchased Assets to the Purchaser, the Transactions, including the granting of any licenses contemplated by the Sale Agreement, and the Closing in accordance with the Motion, the Sale Agreement and this Order; (b) assume and assign the Assumed and Assigned Contracts; and (c) perform, consummate, implement and close fully the Sale Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Sale Agreement. The Debtors are hereby authorized to perform each of their covenants and undertakings as provided in the Sale Agreement and the agreements contemplated thereby prior to or after Closing without further order of the Court.

17. For the avoidance of doubt, the Transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

18. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the Transactions.

19. The Debtors have, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code. Accordingly, appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.

20. The consideration provided by or on behalf of the Purchaser for the Purchased Assets under the Sale Agreement, including in respect of the granting of any related licenses, shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, and costs, damages, or other amounts may not be imposed, recovered or awarded, under section 363(n) of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar state laws.

21. From and after the Closing Date (and in the case of any Undisclosed Patent Interests, subject to receipt by the Sellers of the applicable Exercise Price pursuant to Section 5.19 of the Sale Agreement), this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Debtors' right, title and interest in the Purchased Assets and a bill of sale transferring good, valid and marketable title in such Purchased Assets to the Purchaser on the Closing Date pursuant to the terms of the Sale Agreement and any ancillary agreements, free and clear of all Claims and Interests (other than the Assumed Liabilities, the Standards Obligations, Permitted Encumbrances, as otherwise provided in Sections 2.1.1(a) and 5.21 of the Sale Agreement and as provided in the Nokia Agreement). From and after the Closing Date, the licenses under the Jointly Owned Patents, Specified UK Patents, Undisclosed Patent Interests and any other Patents granted by the Debtors to the Purchaser or the other licenses granted by the Debtors, in either case, pursuant to the Sale Agreement and any related ancillary agreements shall be legal, valid and binding and enforceable in accordance with their terms. The Purchaser is hereby authorized in connection with the consummation of the Sale and the other Transactions or otherwise to

allocate the Purchased Assets or any licenses granted pursuant to the Sale Agreement or any related ancillary agreements among its affiliates, designees, assignees and/or successors as contemplated by the Sale Agreement or in such other manner as it in its sole discretion deems appropriate.

22. Any and all Purchased Assets in the possession or control of any person or entity, including any vendor, supplier or employee of the Debtors shall be transferred to the Purchaser free and clear of all Claims and Interests (other than the Assumed Liabilities, Permitted Encumbrances and the Standards Obligations, as otherwise provided in Sections 2.1.1(a) and 5.21 of the Sale Agreement and as provided in the Nokia Agreement) and shall be delivered and deemed delivered at the time of Closing (or such other time as provided in the Sale Agreement) to the Purchaser.

23. Upon the Closing, all holders of Claims and Interests against the Debtors or the Purchased Assets are permanently and forever barred, restrained and enjoined from asserting any Claims or Interests or enforcing remedies, or commencing or continuing in any manner any action or other proceeding of any kind, against the Purchaser or the Purchased Assets on account of any of the Claims, Interests, Excluded Liabilities or Excluded Assets (other than the Assumed Liabilities, Permitted Encumbrances and the Standards Obligations, as otherwise provided in Sections 2.1.1(a) and 5.21 of the Sale Agreement and as provided in the Nokia Agreement).

24. There is no legal or equitable reason to delay the Transactions.

25. The Transactions do not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors, there is no continuity of enterprise, business or operations between the Debtors and the Purchaser, the Purchaser is not a mere continuation of

the Debtors or the Debtors' estates or their respective or collective businesses or operations, and the Purchaser does not constitute a successor to the Debtor or the Debtors' estates for any purposes including for purposes of any liabilities, debts or obligations of or required to be paid by the Debtors for any tax, pension, labor, employment, or other law, rule or regulation (including filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Except for the Assumed Liabilities, Permitted Encumbrances and the Standards Obligations, as otherwise provided in Sections 2.1.1(a) and 5.21 of the Sale Agreement and as provided in the Nokia Agreement, the Purchaser's acquisition of the Purchased Assets shall be free and clear of any "successor liability" claims or theories of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the time of Closing to the extent permitted by applicable law. The Purchaser's business and operations shall not be deemed a continuation of the Debtors' business or operations as a result of the acquisition of the Purchased Assets or the Transactions.

26. This Order (a) is and shall be effective as a determination that, other than the Permitted Encumbrances, the Standards Obligations, the Assumed Liabilities, as otherwise provided in Sections 2.1.1(a) and 5.21 of the Sale Agreement and as provided in the Nokia Agreement, all Claims and Interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) is and shall be binding upon and shall authorize all persons, institutions, agencies, and entities, including, all filing agents and agencies, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units (including the U.S. Patent

and Trademark Office and similar patent agencies of any jurisdiction), governments and governmental departments or units, secretaries of state, federal, state and local officials and all other persons institutions, agencies, and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Purchased Assets conveyed to the Purchaser. All such entities described above in this paragraph are authorized and specifically directed to strike all recorded Interests against the Purchased Assets from their records, official and otherwise.

27. If any person or entity which has filed statements or other documents or agreements evidencing Interests in the Purchased Assets shall not have delivered to the Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Interests which the person or entity has or may assert with respect to the Purchased Assets, the Debtors and the Purchaser are each acting singly hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Purchased Assets without further order of the Court.

28. In furtherance of the sale of the Purchased Assets to the Purchaser, effective from and after the Closing,

a. the Debtors shall be deemed to have affirmatively and reasonably refused to give consent (including any consent of any Debtor that may be deemed to be given as a result of inaction by such Debtor) to any renewal, extension, assignment, amendment, waiver or modification of any license under the Transferred Patents,

Specified UK Patents or Jointly Owned Patents pursuant to any Cross-License Agreement or Outbound License Agreement (excluding (i) the Commercial Licenses, (ii) the transition services agreements (the "TSAs") and intellectual property license agreements (the "IPLAs") that the Debtors entered into with the purchasers of their various business units after the Petition Date in connection with their divestitures, (iii) any intercompany Contracts with the Sellers (the "Intercompany Licenses") and (iv) the Technology License Contract between Northern Telecom Limited and Guangdong-Nortel Telecommunications Switching Equipment Ltd., dated November 8, 1994, as amended (the "GDNT License")) (collectively, the "License Agreements", and any one, a "License Agreement") that requires the consent of any Debtor pursuant to the terms of such License Agreement and that would have the practical effect of expanding the scope or term of the licenses to the Transferred Patents, Specified UK Patents or Jointly Owned Patents thereunder (regardless of whether such renewal, extension, assignment, amendment, waiver or modification is sought prior to or after the Debtors dissolve or otherwise cease to exist), in each case unless the Purchaser shall otherwise agree in writing, in its sole discretion,

b. the Debtors shall be deemed to have affirmatively and reasonably refused to give consent (including any consent of any Debtor that may be deemed to be given as a result of inaction by such Debtor) (i) to any amendment, modification or waiver to the GDNT License that would have the practical effect of expanding the scope or the term of the licenses under the Transferred Patents, Specified UK Patents or Jointly Owned Patents thereunder and (ii) to any assignment of the GDNT

License or any rights or obligations thereunder other than to Ericsson (as defined in the Sale Agreement) or another purchaser of all or substantially all of the assets of or all of the outstanding shares of Guangdong Nortel Telecommunication Equipment Company Ltd., in each case, unless the Purchaser shall otherwise agree in writing, in its sole discretion,

c. the Debtors shall be deemed to have affirmatively and reasonably refused to give consent (including any consent of any Debtor that may be deemed to be given as a result of inaction by such Debtor) (i) to any amendment. or modification to the IPLAs that would have the practical effect of expanding the scope or the term of the licenses under the Transferred Patents, Specified UK Patents or Jointly Owned Patents thereunder and (ii) to any assignment of any IPLA by the license counterparty or any rights or obligations of the license counterparty under any IPLA, in each case, unless the Purchaser shall otherwise agree in writing, in its sole discretion,

d. the Debtors shall be deemed to have affirmatively and reasonably refused to give consent (including any consent of any Debtor that may be deemed to be given as a result of inaction by such Debtor) to any amendment, modification, renewal or extension to the TSAs that would have the practical effect of expanding the scope or the term of the licenses under the Transferred Patents, Specified UK Patents or Jointly Owned Patents thereunder beyond June 30, 2012 unless the Purchaser shall otherwise agree in writing, in its sole discretion,

e. the Debtors shall be deemed to have affirmatively and reasonably refused to give consent (including any consent of any Debtor that may be deemed to be given as a

result of inaction by such Debtor) to any amendment or modification of any Commercial License that would have the practical effect of expanding the scope or the term of the licenses under the Transferred Patents, Specified UK Patents or Jointly Owned Patents thereunder except (i) to the extent such licenses, as amended or modified, would be permitted to be granted under the Closing Date License Agreement or (ii) to the extent the Purchaser shall otherwise agree in writing, in its sole discretion,

f. the Debtors shall be deemed to have affirmatively and reasonably refused to give consent (including any consent of any Debtor that may be deemed to be given as a result of inaction by such Debtor) (i) to any amendment or modification of any Intercompany License that would have the practical effect of expanding the scope or the term of the licenses under the Transferred Patents, Specified UK Patents or Jointly Owned Patents thereunder except to the extent such licenses, as amended or modified, would be permitted to be granted under the Closing Date License Agreement, and (ii) to any assignment of any Intercompany License by the license counterparty or any rights or obligations of the license counterparty under any Intercompany License, in each case, unless the Purchaser shall otherwise agree in writing, in its sole discretion,

g. no Debtor shall have the right or power to transfer any of its obligations, right, title or interest in the licenses under the Transferred Patents, Specified UK Patents and Jointly Owned Patents under

(1) any License Agreement,

(2) the GDNT License,

(3) any Intercompany License,

(4) (other than in connection with the consolidation, wind-down, reorganization or restructuring of the Debtors and their affiliates (including to reorganized Debtors under confirmed plan(s) of reorganization)) any IPLA or

(5) (other than the transfer by the Debtors of Retained Contracts (as defined in the Sale Agreement) or contracts relating to the disposal of Inventory (as defined in the Sale Agreement), in each case to the extent a sublicense to the assignee of such contract is permitted by the Closing Date License Agreement) any Commercial License,

in each case, to any other person from and after the Closing, and any purported renewal, extension, assignment, amendment, waiver, transfer or modification of a License Agreement, Intercompany License, TSA, IPLA, GDNT License or Commercial License that would contravene the provisions of subparagraphs 28(a) through 28(g) hereof shall be null and void ab initio and unenforceable and of no force or effect and

h the Purchaser is hereby irrevocably appointed (such appointment being coupled with an interest) as each Debtor's attorney-in-fact, with full authority in the place and stead of such Debtor and in the name of such Debtor, from time to time from and after the Closing, in the Purchaser's sole discretion, subject to the provisions of paragraph 5.25 of the Sale Agreement, (x) to take any and all action and to execute and deliver any and all instruments that the Purchaser may deem necessary or advisable to accomplish the purposes of subparagraphs 28(a) through 28(g) hereof and (y) regardless of whether or not any Debtor party to the applicable License Agreement is then in existence, to terminate the license under the Transferred Patents, Specified UK Patents or Jointly Owned Patents in any License Agreement (including by delivering a notice of termination on behalf of a Debtor party thereto, regardless of whether such Debtor is then in existence) upon

the occurrence of any specific date or event or the existence of any specific circumstance to the extent that the occurrence of such date or event or the existence of such circumstance gives any Debtor (regardless of whether such Debtor is then in existence) a right to terminate such License Agreement pursuant to the terms thereof (the provisions of this sentence set forth in subparagraphs 28(a) through 28(h) hereof collectively, the "License Non-Assignment and Non-Renewal Protections").

i. For the avoidance of doubt, the License Non-Assignment and Non-Renewal Protections shall not limit in any way the applicable Debtors' obligations to comply with the provisions of Section 5.13(b) of the Sale Agreement. Each counterparty to a License Agreement, Intercompany License, TSA, IPLA, GDNT License or Commercial License has been provided adequate notice of and opportunity to object to the License Non-Assignment and Non-Renewal Protections and is hereby bound thereby.

29. The License Non-Assignment and Non-Renewal Protections shall not constitute the assignment of the License Agreements, Intercompany Licenses, TSAs, IPLAs, GDNT License or Commercial Licenses to, or assumption of the License Agreements, Intercompany Licenses, TSAs, IPLAs, GDNT License or Commercial Licenses by, the Purchaser.

30. In the event that any Debtor or any of their Affiliates owns any Undisclosed Patent Interest, no Debtor shall directly or indirectly sell, transfer, assign, convey, license or sublicense such Undisclosed Patent Interest to a Third Party (as defined in the Sale Agreement), other than the Purchaser, including by operation of law, in any transaction, series of related transactions or otherwise, except as expressly permitted by Section 5.19 of the Sale Agreement.

and any attempted sale, transfer, assignment, conveyance, license or sublicense not expressly permitted by Section 5.19 of the Sale Agreement shall be null and void *ab initio* and of no force or legal effect.

31. All counterparties to the Assumed and Assigned Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable request of the Purchaser, and shall not charge the Debtors or the Purchaser for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Transactions.

32. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Transactions.

33. No governmental unit may revoke or suspend any lawful right, license, trademark or other permission relating to the use of the Purchased Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 Cases or the consummation of the Sale or other Transactions.

34. To the extent this Order is inconsistent with any prior order or pleading in these Chapter 11 Cases, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Sale Agreement (including all ancillary documents executed in connection therewith), the terms of the Order shall govern.

35. Except as expressly provided in this Order, the Sale Agreement or the ancillary agreements contemplated thereby, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtors or their estates from asserting or otherwise impair or diminish

any right (including any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not a Purchased Asset.

36. This Order shall not be modified by any chapter 11 plan confirmed in these Chapter 11 Cases by any dismissal or conversion of these Chapter 11 Cases, by the appointment of or any action or inaction by any trustee, examiner, responsible person, or foreign representative, or otherwise by any subsequent order of this Court unless expressly consented to in writing by the Purchaser.

37. This Order and the Sale Agreement shall be binding in all respects upon all creditors and interest holders of any of the Debtors (whether known or unknown), all non-debtor parties to the Assumed and Assigned Contracts, all license counterparties, the Committee, the Bondholder Group, all successors and assigns of the Debtors and their Affiliates and subsidiaries, and any trustees, examiners, "responsible persons," foreign representatives, or other fiduciaries appointed in the Debtors' bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Sale Agreement shall not be subject to rejection or avoidance under any circumstances.

38. The failure specifically to include or make reference to any particular provisions of the Sale Agreement or any ancillary agreement contemplated thereby in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Sale Agreement and the ancillary agreements contemplated thereby are authorized and approved in their entirety.

39. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order, including the authority to: (a) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and

the terms of the Sale Agreement, the ancillary agreements contemplated thereby, all amendments thereto and any waivers and consents thereunder; (b) protect the Purchaser, or the Purchased Assets, from and against any Claims, Interests or Excluded Liabilities; (c) compel delivery of all Purchased Assets to the Purchaser; (d) compel the Purchaser and the Debtors to perform all of their obligations under the Sale Agreement; (e) resolve any disputes arising under or related to the Sale Agreement, the ancillary agreements contemplated thereby, the Sale or the Transactions; and (f) provide any further relief that is necessary or appropriate in furtherance of this Order or the Transactions.

40. The Sale Agreement, the ancillary agreements contemplated thereby and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties in accordance with the terms thereof without further order of the Court; provided, however, that any such modification, amendment or supplement is neither material nor materially changes the economic substance of the transactions contemplated hereby (it being understood, for the sake of clarity, for the purposes of this paragraph, that no such modification, amendment or supplement shall be deemed to be material or shall be deemed to materially change the economic substance of the transactions to the extent that the impact does not exceed two percent of the Purchase Price); and provided further that no such modifications, amendments, or supplements may be made except following two (2) days written notice to, or with the prior consent of, the Committee, c/o Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036 (Attention: Fred S. Hodara, Stephen Kuhn, and Kenneth Davis). The Debtors are hereby authorized to perform each of their covenants and undertakings as provided in the Sale Agreement and the ancillary agreements thereto prior to or after Closing without further order of the Court.

41. Notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, (a) the terms of this Order shall be immediately effective and enforceable upon its entry, (b) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (c) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

42. The provisions of this Order are nonseverable and mutually dependent.

43. The Purchaser is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the Transactions contemplated by the Sale Agreement based upon any arrangement made by or on behalf of the Debtors.

44. This Order applies only to Assets owned by the Debtors or in which the Debtors, individually or collectively, have any right, title or interest, to the extent of the Debtors' right title and interest in such Assets. Consequently, notwithstanding any other provision of this Order or the Sale Agreement to the contrary, the portions of this Order that approve the transfer of the Purchased Assets to the Purchaser free and clear of all Claims and Interests, or that modify, enjoin, release or otherwise limit the rights of creditors of entities transferring Purchased Assets, apply only to Purchased Assets owned by the Debtors or in which the Debtors, individually or collectively, have any right, title or interest (to the extent of such right, title and interest) and do not apply to any assets owned solely by non-debtor entities and/or in which the Debtors, individually or collectively, have no right, title or interest.

45. The Purchaser shall deposit proceeds of the Sale less the Good Faith Deposit and any applicable transfer or value-added taxes incurred by the Sellers, and, to the extent agreed by the Sellers, any transaction costs, into an Escrow Account (as defined in the Interim Funding and

Settlement Agreement, dated June 9, 2009 (the "IFSA")). In accordance with this Court's order approving and authorizing the transactions contemplated by the IFSA, the proceeds in the Escrow Account shall not be distributed in advance of either (a) agreement of all of the Selling Debtors (as such term is defined in the IFSA) as to the distribution of such proceeds (subject to the prior consent of the Committee and the Bondholder Group acting in good faith in accordance with Section 12.g of the IFSA) or (b) in the case where the Selling Debtors fail to reach agreement, determination by the relevant dispute resolver(s) in accordance with the terms of the Interim Sales Protocol (as such term is defined in the IFSA and subject to the requirements of Section 12.g of the IFSA), which Interim Sales Protocol shall be approved by the Court. The Debtors are hereby authorized to negotiate and enter into an escrow agreement, on terms and conditions reasonably satisfactory to the Committee and the Monitor acting in good faith, with an escrow agent to establish an Escrow Account without further order of this Court.

46. Neither the Purchaser nor the Debtors shall have an obligation to close the Transactions until all conditions precedent in the Sale Agreement to each of their obligations to close the Transactions have been met, satisfied, or waived in accordance with the terms of the Sale Agreement.

47. This Court hereby requests the aid and recognition of any court, tribunal, regulatory, administrative or other governmental body having jurisdiction in Canada, the United States, France, Germany, the United Kingdom, Ireland or elsewhere, to give effect to this Order and to assist the Sellers and their respective 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 Sellers as may be necessary or desirable to give

effect to this Order or to assist the Sellers and their respective agents in carrying out the terms of this Order.

48. The Sellers are hereby authorized and empowered to apply to any court, tribunal, regulatory, administrative or other governmental body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

49. The Schedules delivered to the Court by the Debtors shall be kept segregated and under seal by the Clerk of Court and shall not be made publicly available pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9081-1(b).

50. Nothing in this Order is intended to affect the ability of the U.S. Department of Justice to undertake antitrust review or other action with respect to any subsequent use, allocation or distribution of the Purchased Assets.

DATED: July 11, 2011

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT 4

# APPLE INC

## FORM 10-Q
(Quarterly Report)

Filed 07/20/11 for the Period Ending 06/25/11

| | |
|---|---|
| Address | ONE INFINITE LOOP<br>CUPERTINO, CA 95014 |
| Telephone | (408) 996-1010 |
| CIK | 0000320193 |
| Symbol | AAPL |
| SIC Code | 3571 - Electronic Computers |
| Industry | Computer Hardware |
| Sector | Technology |
| Fiscal Year | 09/30 |

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

# Form 10-Q

(Mark One)

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

For the quarterly period ended June 25, 2011

or

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

For the transition period from _____to _____.

Commission file number: 000-10030

# APPLE INC.

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

| **California** | **94-2404110** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |
| **1 Infinite Loop**<br>**Cupertino, California** | **95014** |
| **(Address of principal executive offices)** | **(Zip Code)** |

**Registrant's telephone number, including area code: (408) 996-1010**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No ☐

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

| | | | |
|---|---|---|---|
| Large accelerated filer | ☒ | Accelerated filer | ☐ |
| Non-accelerated filer | ☐ (Do not check if a smaller reporting company) | Smaller reporting company | ☐ |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

927,090,886 shares of common stock issued and outstanding as of July 8, 2011

**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**APPLE INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)**
(in millions, except share amounts which are reflected in thousands and per share amounts)

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | June 25, 2011 | June 26, 2010 | June 25, 2011 | June 26, 2010 |
| Net sales | $ 28,571 | $ 15,700 | $ 79,979 | $ 44,882 |
| Cost of sales | 16,649 | 9,564 | 47,541 | 26,710 |
| Gross margin | 11,922 | 6,136 | 32,438 | 18,172 |
| Operating expenses: | | | | |
| Research and development | 628 | 464 | 1,784 | 1,288 |
| Selling, general and administrative | 1,915 | 1,438 | 5,574 | 3,946 |
| Total operating expenses | 2,543 | 1,902 | 7,358 | 5,234 |
| Operating income | 9,379 | 4,234 | 25,080 | 12,938 |
| Other income and expense | 172 | 58 | 334 | 141 |
| Income before provision for income taxes | 9,551 | 4,292 | 25,414 | 13,079 |
| Provision for income taxes | 2,243 | 1,039 | 6,115 | 3,374 |
| Net income | $ 7,308 | $ 3,253 | $ 19,299 | $ 9,705 |
| Earnings per common share: | | | | |
| Basic | $ 7.89 | $ 3.57 | $ 20.91 | $ 10.69 |
| Diluted | $ 7.79 | $ 3.51 | $ 20.63 | $ 10.51 |
| Shares used in computing earnings per share: | | | | |
| Basic | 926,108 | 912,197 | 922,917 | 907,762 |
| Diluted | 937,810 | 927,361 | 935,688 | 923,341 |

See accompanying Notes to Condensed Consolidated Financial Statements.

**APPLE INC.**

**CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)**
(in millions, except share amounts)

| | June 25, 2011 | September 25, 2010 |
|---|---|---|
| **ASSETS:** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 12,091 | $ 11,261 |
| Short-term marketable securities | 16,304 | 14,359 |
| Accounts receivable, less allowances of $55 in each period | 6,102 | 5,510 |
| Inventories | 889 | 1,051 |
| Deferred tax assets | 1,892 | 1,636 |
| Vendor non-trade receivables | 5,369 | 4,414 |
| Other current assets | 4,251 | 3,447 |
| Total current assets | 46,898 | 41,678 |
| Long-term marketable securities | 47,761 | 25,391 |
| Property, plant and equipment, net | 6,749 | 4,768 |
| Goodwill | 741 | 741 |
| Acquired intangible assets, net | 1,169 | 342 |
| Other assets | 3,440 | 2,263 |
| Total assets | $ 106,758 | $ 75,183 |
| **LIABILITIES AND SHAREHOLDERS' EQUITY:** | | |
| Current liabilities: | | |
| Accounts payable | $ 15,270 | $ 12,015 |
| Accrued expenses | 7,597 | 5,723 |
| Deferred revenue | 3,992 | 2,984 |
| Total current liabilities | 26,859 | 20,722 |
| Deferred revenue - non-current | 1,407 | 1,139 |
| Other non-current liabilities | 9,149 | 5,531 |
| Total liabilities | 37,415 | 27,392 |
| Commitments and contingencies | | |
| Shareholders' equity: | | |
| Common stock, no par value; 1,800,000,000 shares authorized; 926,903,779 and 915,970,050 shares issued and outstanding, respectively | 12,715 | 10,668 |
| Retained earnings | 56,239 | 37,169 |
| Accumulated other comprehensive income/(loss) | 389 | (46) |
| Total shareholders' equity | 69,343 | 47,791 |
| Total liabilities and shareholders' equity | $ 106,758 | $ 75,183 |

See accompanying Notes to Condensed Consolidated Financial Statements.

**APPLE INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)**
(in millions)

| | Nine Months Ended | |
|---|---|---|
| | June 25, 2011 | June 26, 2010 |
| Cash and cash equivalents, beginning of the period | $ 11,261 | $ 5,263 |
| Operating activities: | | |
| Net income | 19,299 | 9,705 |
| Adjustments to reconcile net income to cash generated by operating activities: | | |
| Depreciation, amortization and accretion | 1,271 | 698 |
| Stock-based compensation expense | 870 | 655 |
| Deferred income tax expense | 2,232 | 1,298 |
| Changes in operating assets and liabilities: | | |
| Accounts receivable, net | (592) | (79) |
| Inventories | 162 | (487) |
| Vendor non-trade receivables | (955) | (1,256) |
| Other current and non-current assets | (1,551) | (1,001) |
| Accounts payable | 2,480 | 2,812 |
| Deferred revenue | 1,276 | 806 |
| Other current and non-current liabilities | 2,608 | (239) |
| Cash generated by operating activities | 27,100 | 12,912 |
| Investing activities: | | |
| Purchases of marketable securities | (75,133) | (41,318) |
| Proceeds from maturities of marketable securities | 16,396 | 19,758 |
| Proceeds from sales of marketable securities | 34,301 | 14,048 |
| Payments made in connection with business acquisitions, net of cash acquired | 0 | (615) |
| Payments for acquisition of property, plant and equipment | (2,615) | (1,245) |
| Payments for acquisition of intangible assets | (266) | (63) |
| Other | 34 | (36) |
| Cash used in investing activities | (27,283) | (9,471) |
| Financing activities: | | |
| Proceeds from issuance of common stock | 577 | 733 |
| Excess tax benefits from equity awards | 915 | 652 |
| Taxes paid related to net share settlement of equity awards | (479) | (384) |
| Cash generated by financing activities | 1,013 | 1,001 |
| Increase in cash and cash equivalents | 830 | 4,442 |
| Cash and cash equivalents, end of the period | $ 12,091 | $ 9,705 |
| Supplemental cash flow disclosure: | | |
| Cash paid for income taxes, net | $ 2,563 | $ 2,657 |

See accompanying Notes to Condensed Consolidated Financial Statements.

**Apple Inc.**

**Notes to Condensed Consolidated Financial Statements (Unaudited)**

**Note 1 – Summary of Significant Accounting Policies**

Apple Inc. and its wholly-owned subsidiaries (collectively "Apple" or the "Company") designs, manufactures, and markets mobile communication and media devices, personal computers, and portable digital music players, and sells a variety of related software, services, peripherals, networking solutions, and third-party digital content and applications. The Company sells its products worldwide through its retail stores, online stores, and direct sales force, as well as through third-party cellular network carriers, wholesalers, retailers and value-added resellers. In addition, the Company sells a variety of third-party iPhone, iPad, Macintosh ("Mac"), and iPod compatible products including application software, printers, storage devices, speakers, headphones, and various other accessories and supplies through its online and retail stores. The Company sells to consumers, small and mid-sized businesses, education, enterprise and government customers.

**Basis of Presentation and Preparation**

The accompanying condensed consolidated financial statements include the accounts of the Company. Intercompany accounts and transactions have been eliminated. The preparation of these condensed consolidated financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the amounts reported in these condensed consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates. Certain prior period amounts in the condensed consolidated financial statements and notes thereto have been reclassified to conform to the current period's presentation.

These condensed consolidated financial statements and accompanying notes should be read in conjunction with the Company's annual consolidated financial statements and the notes thereto for the fiscal year ended September 25, 2010, included in its Annual Report on Form 10-K (the "2010 Form 10-K"). Unless otherwise stated, references to particular years or quarters refer to the Company's fiscal years ended in September and the associated quarters of those fiscal years.

During the first quarter of 2011, the Company adopted the Financial Accounting Standard Board's ("FASB") new accounting standard on consolidation of variable interest entities. This new accounting standard eliminates the mandatory quantitative approach in determining control for evaluating whether variable interest entities need to be consolidated in favor of a qualitative analysis, and requires an ongoing reassessment of control over such entities. The adoption of this new accounting standard did not impact the Company's condensed consolidated financial statements.

**Revenue Recognition**

*Revenue Recognition for Arrangements with Multiple Deliverables*

For multi-element arrangements that include tangible products containing software that is essential to the tangible product's functionality, undelivered software elements relating to the tangible product's essential software, and undelivered non-software services, the Company allocates revenue to all deliverables based on their relative selling prices. In such circumstances, the Company uses a hierarchy to determine the selling price to be used for allocating revenue to deliverables: (i) vendor-specific objective evidence of fair value ("VSOE"), (ii) third-party evidence of selling price ("TPE"), and (iii) best estimate of the selling price ("ESP"). VSOE generally exists only when the Company sells the deliverable separately and is the price actually charged by the Company for that deliverable. ESPs reflect the Company's best estimates of what the selling prices of elements would be if they were sold regularly on a stand-alone basis.

For sales of iPhone, iPad, Apple TV, for sales of iPod touch beginning in June 2010, and for sales of Mac beginning in June 2011, the Company has indicated it may from time-to-time provide future unspecified software upgrades and features free of charge to customers. In June 2011, the Company announced it would provide various non-software services ("the online services") to owners of qualifying versions of iPhone, iPad, iPod touch and Mac. The Company has identified up to three deliverables in arrangements involving the sale of these devices. The first deliverable is the hardware and software essential to the functionality of the hardware device delivered at the time of sale. The second deliverable is the embedded right included with the purchase of iPhone, iPad, iPod touch, Mac and Apple TV to receive on a when-and-if-available basis, future unspecified software upgrades and features relating to the product's essential software. The third deliverable is the online services to be provided to qualifying versions of iPhone, iPad, iPod touch and Mac. The Company allocates revenue between these deliverables using the relative selling price method. Because the Company has neither VSOE nor TPE for these deliverables, the allocation of revenue has been based on the Company's ESPs. Amounts allocated to the delivered hardware and the related essential software are recognized at the time of sale provided the other conditions for revenue recognition have been met. Amounts allocated to the embedded unspecified software upgrade rights and the online services are deferred and recognized on a straight-line basis over the estimated lives of each of these devices, which range from 24 to 48 months. Cost of sales related to delivered hardware and related essential software, including estimated warranty costs, are recognized at the time of sale. Costs incurred to provide non-software services are recognized as cost of sales as incurred, and engineering and sales and marketing costs are recognized as operating expenses as incurred.

The Company's process for determining its ESP for deliverables without VSOE or TPE considers multiple factors that may vary depending upon the unique facts and circumstances related to each deliverable. The Company believes its customers, particularly consumers, would be reluctant to buy the types of unspecified software upgrade rights embedded with iPhone, iPad, iPod touch, Mac and Apple TV. This view is primarily based on the fact that unspecified upgrade rights do not obligate the Company to provide upgrades at a particular time or at all, and do not specify to customers which upgrades or features will be delivered. The Company also believes its customers would be unwilling to pay a significant amount for access to the online services because other companies offer similar services at little or no cost to users. Therefore, the Company has concluded that if it were to sell upgrade rights or access to the online services on a standalone basis, including those rights and services attached to iPhone, iPad, iPod touch, Mac and Apple TV, the selling price would be relatively low. Key factors considered by the Company in developing the ESPs for the upgrade rights include prices charged by the Company for similar offerings, market trends for pricing of Mac and iOS software, the Company's historical pricing practices, the nature of the upgrade rights (e.g., unspecified and when-and-if-available), and the relative ESP of the upgrade rights as compared to the total selling price of the product. The Company may also consider, when appropriate, the impact of other products and services, including advertising services, on selling price assumptions when developing and reviewing its ESPs for software upgrade rights and related deliverables. The Company may also consider additional factors as appropriate, including the pricing of competitive alternatives if they exist and product-specific business objectives. When relevant, the same factors are considered by the Company in developing ESPs for service offerings such as the online services; however, the primary consideration in developing ESPs for the online services is the estimated cost to provide such services over the life of the related devices, including consideration for a reasonable profit margin.

Beginning with the Company's June 2011 announcement of the upcoming release of the online services and Mac OS X Lion, the Company's combined ESP for the unspecified software upgrade rights and the right to receive the online services are as follows: $16 for iPhone and iPad, $11 for iPod touch, and $22 for Mac. The Company's ESP for the embedded unspecified software upgrade right included with each Apple TV is $5 for 2011. Amounts allocated to the embedded unspecified software upgrade rights and the online services associated with iPhone, iPad, iPod touch and Apple TV are recognized on a straight-line basis over 24 months, and amounts allocated to the embedded unspecified software upgrade rights and the online services associated with Mac are recognized on a straight-line basis over 48 months.

The Company recognizes revenue in accordance with industry specific software accounting guidance for sales of software upgrades. Therefore, beginning in July 2011 the Company will defer all revenue from the sale of upgrades to the Mac OS and iLife software and recognize it ratably over 36 months.

**Earnings Per Common Share**

Basic earnings per common share is computed by dividing income available to common shareholders by the weighted-average number of shares of common stock outstanding during the period. Diluted earnings per common share is computed by dividing income available to common shareholders by the weighted-average number of shares of common stock outstanding during the period increased to include the number of additional shares of common stock that would have been outstanding if the potentially dilutive securities had been issued. Potentially dilutive securities include outstanding options, shares to be purchased under the employee stock purchase plan, and unvested restricted stock units ("RSUs"). The dilutive effect of potentially dilutive securities is reflected in diluted earnings per common share by application of the treasury stock method. Under the treasury stock method, an increase in the fair market value of the Company's common stock can result in a greater dilutive effect from potentially dilutive securities.

The following table summarizes the computation of basic and diluted earnings per common share for the three- and nine-month periods ended June 25, 2011 and June 26, 2010 (in thousands, except net income in millions and per share amounts):

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | June 25, 2011 | June 26, 2010 | June 25, 2011 | June 26, 2010 |
| Numerator: | | | | |
| Net income | $ 7,308 | $ 3,253 | $ 19,299 | $ 9,705 |
| Denominator: | | | | |
| Weighted-average shares outstanding | 926,108 | 912,197 | 922,917 | 907,762 |
| Effect of dilutive securities | 11,702 | 15,164 | 12,771 | 15,579 |
| Weighted-average diluted shares | 937,810 | 927,361 | 935,688 | 923,341 |
| Basic earnings per common share | $ 7.89 | $ 3.57 | $ 20.91 | $ 10.69 |
| Diluted earnings per common share | $ 7.79 | $ 3.51 | $ 20.63 | $ 10.51 |

Potentially dilutive securities representing approximately 2,000 shares and 220,000 shares of common stock for the three months ended June 25, 2011 and June 26, 2010, respectively, and 206,000 shares and 498,000 shares of common stock for the nine months ended June 25, 2011 and June 26, 2010, respectively, were excluded from the computation of diluted earnings per common share for these periods because their effect would have been antidilutive.

**Fair Value Measurements**

Fair value is the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

*Level 1* – Quoted prices in active markets for identical assets or liabilities.

*Level 2* – Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

*Level 3* – Inputs that are generally unobservable and typically reflect management's estimate of assumptions that market participants would use in pricing the asset or liability.

**Note 2 – Financial Instruments**

**Cash, Cash Equivalents and Marketable Securities**

All highly liquid investments with maturities of three months or less at the date of purchase are classified as cash equivalents. The Company's marketable debt and equity securities have been classified and accounted for as available-for-sale. Management determines the appropriate classification of its investments at the time of purchase and reevaluates the available-for-sale designations as of each balance sheet date. The Company classifies its marketable debt securities as either short-term or long-term based on each instrument's underlying contractual maturity date. Marketable debt securities with maturities of 12 months or less are classified as short-term and marketable debt securities with maturities greater than 12 months are classified as long-term. The Company classifies its marketable equity securities, including mutual funds, as either short-term or long-term based on the nature of each security and its availability for use in current operations.

The following tables summarize the Company's available-for-sale securities' adjusted cost, gross unrealized gains, gross unrealized losses and fair value by significant investment category recorded as cash and cash equivalents or short-term or long-term marketable securities as of June 25, 2011 and September 25, 2010 (in millions):

| | June 25, 2011 | | | | | | |
|---|---|---|---|---|---|---|---|
| | Adjusted Cost | Unrealized Gains | Unrealized Losses | Fair Value | Cash and Cash Equivalents | Short-Term Marketable Securities | Long-Term Marketable Securities |
| Cash | $ 2,769 | $ 0 | $ 0 | $ 2,769 | $ 2,769 | $ 0 | $ 0 |
| Level 1: | | | | | | | |
| Money market funds | 1,414 | 0 | 0 | 1,414 | 1,414 | 0 | 0 |
| Mutual funds | 150 | 0 | 0 | 150 | 0 | 150 | 0 |
| Subtotal | 1,564 | 0 | 0 | 1,564 | 1,414 | 150 | 0 |
| Level 2: | | | | | | | |
| U.S. Treasury securities | 10,736 | 51 | 0 | 10,787 | 1,139 | 1,876 | 7,772 |
| U.S. agency securities | 9,986 | 17 | (1) | 10,002 | 391 | 1,980 | 7,631 |
| Non-U.S. government securities | 6,127 | 18 | (1) | 6,144 | 427 | 1,952 | 3,765 |
| Certificates of deposit and time deposits | 4,538 | 4 | 0 | 4,542 | 893 | 1,231 | 2,418 |
| Commercial paper | 6,326 | 0 | 0 | 6,326 | 4,977 | 1,349 | 0 |
| Corporate securities | 30,441 | 167 | (9) | 30,599 | 81 | 7,242 | 23,276 |
| Municipal securities | 3,389 | 35 | (1) | 3,423 | 0 | 524 | 2,899 |
| Subtotal | 71,543 | 292 | (12) | 71,823 | 7,908 | 16,154 | 47,761 |
| Total | $ 75,876 | $ 292 | $ (12) | $ 76,156 | $ 12,091 | $ 16,304 | $ 47,761 |

| | September 25, 2010 | | | | | | |
|---|---|---|---|---|---|---|---|
| | Adjusted Cost | Unrealized Gains | Unrealized Losses | Fair Value | Cash and Cash Equivalents | Short-Term Marketable Securities | Long-Term Marketable Securities |
| Cash | $ 1,690 | $ 0 | $ 0 | $ 1,690 | $ 1,690 | $ 0 | $ 0 |
| Level 1: | | | | | | | |
| Money market funds | 2,753 | 0 | 0 | 2,753 | 2,753 | 0 | 0 |
| Level 2: | | | | | | | |
| U.S. Treasury securities | 9,872 | 42 | 0 | 9,914 | 2,571 | 2,130 | 5,213 |
| U.S. agency securities | 8,717 | 10 | 0 | 8,727 | 1,916 | 4,339 | 2,472 |
| Non-U.S. government securities | 2,648 | 13 | 0 | 2,661 | 10 | 865 | 1,786 |
| Certificates of deposit and time deposits | 2,735 | 5 | (1) | 2,739 | 374 | 850 | 1,515 |
| Commercial paper | 3,168 | 0 | 0 | 3,168 | 1,889 | 1,279 | 0 |
| Corporate securities | 17,349 | 102 | (9) | 17,442 | 58 | 4,522 | 12,862 |
| Municipal securities | 1,899 | 19 | (1) | 1,917 | 0 | 374 | 1,543 |
| Subtotal | 46,388 | 191 | (11) | 46,568 | 6,818 | 14,359 | 25,391 |
| Total | $ 50,831 | $ 191 | $ (11) | $ 51,011 | $ 11,261 | $ 14,359 | $ 25,391 |

The net unrealized gains as of June 25, 2011 and September 25, 2010 related primarily to long-term marketable securities. The Company may sell certain of its marketable securities prior to their stated maturities for strategic reasons including, but not limited to, anticipation of credit deterioration and duration management. The Company recognized net realized gains of $14 million and $70 million during the three- and nine-month periods ended June 25, 2011, respectively. The Company recognized no significant net realized gains or losses during the three- and nine-month periods ended June 26, 2010. The maturities of the Company's long-term marketable securities generally range from one year to five years.

As of June 25, 2011 and September 25, 2010, gross unrealized losses related to individual securities that had been in a continuous loss position for 12 months or longer were not significant.

The Company considers the declines in market value of its marketable securities investment portfolio to be temporary in nature. The Company typically invests in highly-rated securities, and its policy generally limits the amount of credit exposure to any one issuer. The Company's investment policy requires investments to generally be investment grade, primarily rated single-A or better, with the objective of minimizing the potential risk of principal loss. Fair values were determined for each individual security in the investment portfolio. When evaluating the investments for other-than-temporary impairment, the Company reviews factors such as the length of time and extent to which fair value has been below cost basis, the financial condition of the issuer and any changes thereto, and the Company's intent to sell, or whether it is more likely than not it will be required to sell, the investment before recovery of the investment's amortized cost basis. During the three- and nine-month periods ended June 25, 2011 and June 26, 2010, the Company did not recognize any significant impairment charges. As of June 25, 2011, the Company does not consider any of its investments to be other-than-temporarily impaired.

**Derivative Financial Instruments**

The Company uses derivatives to partially offset its business exposure to foreign currency exchange risk. The Company may enter into foreign currency forward and option contracts to offset some of the foreign exchange risk on expected future cash flows on certain forecasted revenue and cost of sales, on net investments in certain foreign subsidiaries, and on certain existing assets and liabilities. To help protect gross margins from fluctuations in foreign currency exchange rates, certain of the Company's subsidiaries whose functional currency is the U.S. dollar hedge a portion of forecasted foreign currency revenue. The Company's subsidiaries whose functional currency is not the U.S. dollar and who sell in local currencies may hedge a portion of forecasted inventory purchases not denominated in the subsidiaries' functional currencies. The Company typically hedges portions of its forecasted foreign currency exposure associated with revenue and inventory purchases for three to six months. To help protect the net investment in a foreign operation from adverse changes in foreign currency exchange rates, the Company may enter into foreign currency forward and option contracts to offset the changes in the carrying amounts of these investments due to fluctuations in foreign currency exchange rates. The Company may also enter into foreign currency forward and option contracts to partially offset the foreign currency exchange gains and losses generated by the re-measurement of certain assets and liabilities denominated in non-functional currencies. However, the Company may choose not to hedge certain foreign currency exchange exposures for a variety of reasons including, but not limited to, materiality, accounting considerations and the prohibitive economic cost of hedging particular exposures. There can be no assurance the hedges will offset more than a portion of the financial impact resulting from movements in foreign currency exchange rates.

The Company's accounting policies for these instruments are based on whether the instruments are designated as hedge or non-hedge instruments. The Company records all derivatives on the Condensed Consolidated Balance Sheets at fair value. The effective portions of cash flow hedges are recorded in other comprehensive income until the hedged item is recognized in earnings. The effective portions of net investment hedges are recorded in other comprehensive income as a part of the cumulative translation adjustment. The ineffective portions of cash flow hedges and net investment hedges are recorded in other income and expense. Derivatives that are not designated as hedging instruments are adjusted to fair value through earnings in the financial statement line item the derivative relates to.

The Company had a net deferred gain associated with cash flow hedges of approximately $21 million and a net deferred loss associated with cash flow hedges of approximately $252 million, net of taxes, recorded in other comprehensive income as of June 25, 2011 and September 25, 2010, respectively. Deferred gains and losses associated with cash flow hedges of foreign currency revenue are recognized as a component of net sales in the same period as the related revenue is recognized, and deferred gains and losses related to cash flow hedges of inventory purchases are recognized as a component of cost of sales in the same period as the related costs are recognized. Substantially all of the Company's hedged transactions as of June 25, 2011 are expected to occur within six months.

Derivative instruments designated as cash flow hedges must be de-designated as hedges when it is probable the forecasted hedged transaction will not occur in the initially identified time period or within a subsequent two-month time period. Deferred gains and losses in other comprehensive income associated with such derivative instruments are reclassified immediately into earnings through other income and expense. Any subsequent changes in fair value of such derivative instruments are reflected in other income and expense unless they are re-designated as hedges of other transactions. The Company did not recognize any significant net gains or losses related to the loss of hedge designation on discontinued cash flow hedges during the three- and nine-month periods ended June 25, 2011 and June 26, 2010.

The Company's unrealized net gains and losses on net investment hedges, included in the cumulative translation adjustment account of accumulated other comprehensive income ("AOCI"), were not significant as of June 25, 2011 and September 25, 2010, respectively. The ineffective portions and amounts excluded from the effectiveness test of net investment hedges are recorded in other income and expense.

The Company recognized in earnings a net loss on foreign currency forward and option contracts not designated as hedging instruments of $45 million and $100 million during the three- and nine-month periods ended June 25, 2011, respectively, and a net gain on foreign currency forward and option contracts not designated as hedging instruments of $25 million and $15 million during the three- and nine-month periods ended June 26, 2010, respectively. These amounts, recorded in other income and expense, represent the net gain or loss on the derivative contracts and do not include changes in the related exposures, which generally offset a portion of the gain or loss on the derivative contracts.

The following table summarizes the notional principal amounts of the Company's outstanding derivative instruments and credit risk amounts associated with outstanding or unsettled derivative instruments as of June 25, 2011 and September 25, 2010 (in millions):

| | June 25, 2011 | | September 25, 2010 | |
|---|---|---|---|---|
| | Notional Principal | Credit Risk Amounts | Notional Principal | Credit Risk Amounts |
| Instruments qualifying as accounting hedges: | | | | |
| Foreign exchange contracts | $ 12,282 | $ 128 | $ 13,957 | $ 62 |
| Instruments other than accounting hedges: | | | | |
| Foreign exchange contracts | $ 6,415 | $ 14 | $ 10,727 | $ 45 |

The notional principal amounts for outstanding derivative instruments provide one measure of the transaction volume outstanding and do not represent the amount of the Company's exposure to credit or market loss. The credit risk amounts represent the Company's gross exposure to potential accounting loss on derivative instruments that are outstanding or unsettled if all counterparties failed to perform according to the terms of the contract, based on then-current currency exchange rates at each respective date. The Company's gross exposure on these transactions may be further mitigated by collateral received from certain counterparties. The Company's exposure to credit loss and market risk will vary over time as a function of currency exchange rates. Although the table above reflects the notional principal and credit risk amounts of the Company's foreign exchange instruments, it does not reflect the gains or losses associated with the exposures and transactions that the foreign exchange instruments are intended to hedge. The amounts ultimately realized upon settlement of these financial instruments, together with the gains and losses on the underlying exposures, will depend on actual market conditions during the remaining life of the instruments.

The Company generally enters into master netting arrangements, which reduce credit risk by permitting net settlement of transactions with the same counterparty. To further limit credit risk, the Company generally enters into collateral security arrangements that provide for collateral to be received or posted when the net fair value of certain financial instruments fluctuates from contractually established thresholds. The Company presents its derivative assets and derivative liabilities at their gross fair values. As of June 25, 2011, the Company received cash collateral related to the derivative instruments under its collateral security arrangements of $8 million, which it recorded as accrued expenses in the Condensed Consolidated Balance Sheet. As of September 25, 2010, the Company posted cash collateral related to the derivative instruments under its collateral security arrangements of $445 million, which it recorded as other current assets in the Condensed Consolidated Balance Sheet. The Company did not have any derivative instruments with credit-risk related contingent features that would require it to post additional collateral as of June 25, 2011 or September 25, 2010.

The following tables summarize the gross fair value of the Company's derivative instruments as reflected in the Condensed Consolidated Balance Sheets as of June 25, 2011 and September 25, 2010 (in millions):

| | June 25, 2011 | | |
|---|---|---|---|
| | Fair Value of Derivatives Designated as Hedge Instruments | Fair Value of Derivatives Not Designated as Hedge Instruments | Total Fair Value |
| Derivative assets (a): | | | |
| Foreign exchange contracts | $ 125 | $ 14 | $ 139 |
| Derivative liabilities (b): | | | |
| Foreign exchange contracts | $ 64 | $ 6 | $ 70 |

| | September 25, 2010 | | |
|---|---|---|---|
| | Fair Value of Derivatives Designated as Hedge Instruments | Fair Value of Derivatives Not Designated as Hedge Instruments | Total Fair Value |
| Derivative assets (a): | | | |
| Foreign exchange contracts | $ 62 | $ 45 | $ 107 |
| Derivative liabilities (b): | | | |
| Foreign exchange contracts | $ 488 | $ 118 | $ 606 |

(a) The fair value of derivative assets is measured using Level 2 fair value inputs and is recorded as other current assets in the Condensed Consolidated Balance Sheets.

(b) The fair value of derivative liabilities is measured using Level 2 fair value inputs and is recorded as accrued expenses in the Condensed Consolidated Balance Sheets.

The following table summarizes the pre-tax effect of the Company's derivative instruments designated as cash flow and net investment hedges in the Condensed Consolidated Statements of Operations for the three- and nine-month periods ended June 25, 2011 and June 26, 2010 (in millions):

| | Three Month Periods | | | | | | |
|---|---|---|---|---|---|---|---|
| | Gains/(Losses) Recognized in OCI - Effective Portion (e) | | Gains/(Losses) Reclassified from AOCI into Income - Effective Portion (e) | | | Gains/(Losses) Recognized – Ineffective Portion and Amount Excluded from Effectiveness Testing | |
| | June 25, 2011 | June 26, 2010 | June 25, 2011 (a) | June 26, 2010 (b) | Location | June 25, 2011 | June 26, 2010 |
| Cash flow hedges: | | | | | | | |
| Foreign exchange contracts | $ 12 | $ 83 | $ (162) | $ 67 | Other income and expense | $ 15 | $ (50) |
| Net investment hedges: | | | | | | | |
| Foreign exchange contracts | (7) | (18) | 0 | 0 | Other income and expense | 1 | 0 |
| Total | $ 5 | $ 65 | $ (162) | $ 67 | | $ 16 | $ (50) |

| | Nine Month Periods | | | | | | |
|---|---|---|---|---|---|---|---|
| | Gains/(Losses) Recognized in OCI - Effective Portion (e) | | Gains/(Losses) Reclassified from AOCI into Income - Effective Portion (e) | | | Gains/(Losses) Recognized – Ineffective Portion and Amount Excluded from Effectiveness Testing | |
| | June 25, 2011 | June 26, 2010 | June 25, 2011 (c) | June 26, 2010 (d) | Location | June 25, 2011 | June 26, 2010 |
| Cash flow hedges: | | | | | | | |
| Foreign exchange contracts | $ (270) | $ 145 | $ (701) | $ 80 | Other income and expense | $ (104) | $ (88) |
| Net investment hedges: | | | | | | | |
| Foreign exchange contracts | (21) | (16) | 0 | 0 | Other income and expense | 1 | 0 |
| Total | $ (291) | $ 129 | $ (701) | $ 80 | | $ (103) | $ (88) |

(a) Includes gains/(losses) reclassified from AOCI into income for the effective portion of cash flow hedges, of which $(101) million and $(61) million were recognized within net sales and cost of sales, respectively, within the Condensed Consolidated Statement of Operations for the three months ended June 25, 2011. There were no amounts reclassified from AOCI into income for the effective portion of net investment hedges for the three months ended June 25, 2011.

(b) Includes gains/(losses) reclassified from AOCI into income for the effective portion of cash flow hedges, of which $78 million and $(11) million were recognized within net sales and cost of sales, respectively, within the Condensed Consolidated Statement of Operations for the three months ended June 26, 2010. There were no amounts reclassified from AOCI into income for the effective portion of net investment hedges for the three months ended June 26, 2010.

(c) Includes gains/(losses) reclassified from AOCI into income for the effective portion of cash flow hedges, of which $(382) million and $(319) million were recognized within net sales and cost of sales, respectively, within the Condensed Consolidated Statement of Operations for the nine months ended June 25, 2011. There were no amounts reclassified from AOCI into income for the effective portion of net investment hedges for the nine months ended June 25, 2011.

(d) Includes gains/(losses) reclassified from AOCI into income for the effective portion of cash flow hedges, of which $109 million and $(29) million were recognized within net sales and cost of sales, respectively, within the Condensed Consolidated Statement of Operations for the nine months ended June 26, 2010. There were no amounts reclassified from AOCI into income for the effective portion of net investment hedges for the nine months ended June 26, 2010.

(e) Refer to Note 5, “Shareholders’ Equity and Stock-Based Compensation” of this Form 10-Q, which summarizes the activity in AOCI related to derivatives.

**Accounts Receivable**

The Company has considerable trade receivables outstanding with its third-party cellular network carriers, wholesalers, retailers, value-added resellers, small and mid-sized businesses, and education, enterprise and government customers that are not covered by collateral, third-party financing arrangements or credit insurance. As of June 25, 2011, trade receivables from one customer accounted for 12% of the Company’s total trade receivables. Trade receivables from two of the Company’s customers accounted for 15% and 12% of total trade receivables as of September 25, 2010. The Company’s cellular network carriers accounted for 60% and 64% of trade receivables as of June 25, 2011 and September 25, 2010, respectively.

Additionally, the Company has non-trade receivables from certain of its manufacturing vendors. Vendor non-trade receivables from two of the Company’s vendors accounted for 56% and 22% of total non-trade receivables as of June 25, 2011 and vendor non-trade receivables from two of the Company’s vendors accounted for 57% and 24% of total non-trade receivables as of September 25, 2010.

**Note 3 – Condensed Consolidated Financial Statement Details**

The following tables summarize the Company's condensed consolidated financial statement details as of June 25, 2011 and September 25, 2010 (in millions):

**Property, Plant and Equipment**

| | June 25, 2011 | September 25, 2010 |
|---|---|---|
| Land and buildings | $ 2,028 | $ 1,471 |
| Machinery, equipment and internal-use software | 5,789 | 3,589 |
| Office furniture and equipment | 172 | 144 |
| Leasehold improvements | 2,359 | 2,030 |
| Gross property, plant and equipment | 10,348 | 7,234 |
| Accumulated depreciation and amortization | (3,599) | (2,466) |
| Net property, plant and equipment | $ 6,749 | $ 4,768 |

**Accrued Expenses**

| | June 25, 2011 | September 25, 2010 |
|---|---|---|
| Accrued warranty and related costs | $ 1,190 | $ 761 |
| Deferred margin on component sales | 1,362 | 663 |
| Accrued taxes | 1,130 | 524 |
| Accrued compensation and employee benefits | 546 | 436 |
| Accrued marketing and selling expenses | 488 | 396 |
| Other current liabilities | 2,881 | 2,943 |
| Total accrued expenses | $ 7,597 | $ 5,723 |

**Non-Current Liabilities**

| | June 25, 2011 | September 25, 2010 |
|---|---|---|
| Deferred tax liabilities | $ 7,331 | $ 4,300 |
| Other non-current liabilities | 1,818 | 1,231 |
| Total other non-current liabilities | $ 9,149 | $ 5,531 |

**Note 4 – Income Taxes**

As of June 25, 2011, the Company recorded gross unrecognized tax benefits of $1.2 billion, of which $534 million, if recognized, would affect the Company's effective tax rate. As of September 25, 2010, the total amount of gross unrecognized tax benefits was $943 million, of which $404 million, if recognized, would affect the Company's effective tax rate. The Company's total gross unrecognized tax benefits are classified as other non-current liabilities in the Condensed Consolidated Balance Sheets. The Company had $266 million and $247 million of gross interest and penalties accrued as of June 25, 2011 and September 25, 2010, respectively, which are classified as other non-current liabilities in the Condensed Consolidated Balance Sheets.

Management believes that an adequate provision has been made for any adjustments that may result from tax examinations. However, the outcome of tax audits cannot be predicted with certainty. If any issues addressed in the Company's tax audits are resolved in a manner not consistent with management's expectations, the Company could be required to adjust its provision for income tax in the period such resolution occurs. Although timing of the resolution and/or closure of audits is not certain, the Company does not believe it is reasonably possible that its unrecognized tax benefits would materially change in the next 12 months.

**Note 5 – Shareholders' Equity and Stock-Based Compensation**

**Preferred Stock**

The Company has five million shares of authorized preferred stock, none of which is issued or outstanding. Under the terms of the Company's Restated Articles of Incorporation, the Board of Directors is authorized to determine or alter the rights, preferences, privileges and restrictions of the Company's authorized but unissued shares of preferred stock.

**Comprehensive Income**

Comprehensive income consists of two components, net income and other comprehensive income. Other comprehensive income refers to revenue, expenses, gains, and losses that under GAAP are recorded as an element of shareholders' equity but are excluded from net income. The Company's other comprehensive income consists of foreign currency translation adjustments from those subsidiaries not using the U.S. dollar as their functional currency, unrealized gains and losses on marketable securities categorized as available-for-sale, and net deferred gains and losses on certain derivative instruments accounted for as cash flow hedges.

The following table summarizes the components of total comprehensive income, net of taxes, during the three- and nine-month periods ended June 25, 2011 and June 26, 2010 (in millions):

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | June 25, 2011 | June 26, 2010 | June 25, 2011 | June 26, 2010 |
| Net income | $ 7,308 | $ 3,253 | $ 19,299 | $ 9,705 |
| Other comprehensive income: | | | | |
| Change in unrecognized gains/losses on derivative instruments | 112 | 13 | 273 | 41 |
| Change in foreign currency translation | 11 | (54) | 101 | (43) |
| Change in unrealized gains/losses on marketable securities | 140 | 24 | 61 | 33 |
| Total comprehensive income | $ 7,571 | $ 3,236 | $ 19,734 | $ 9,736 |

The following table summarizes activity in other comprehensive income related to derivatives, net of taxes, held by the Company during the three- and nine-month periods ended June 25, 2011 and June 26, 2010 (in millions):

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | June 25, 2011 | June 26, 2010 | June 25, 2011 | June 26, 2010 |
| Change in fair value of derivatives | $ 8 | $ 55 | $ (175) | $ 91 |
| Adjustment for net gains/losses realized and included in income | 104 | (42) | 448 | (50) |
| Change in unrecognized gains/losses on derivative instruments | $ 112 | $ 13 | $ 273 | $ 41 |

The following table summarizes the components of AOCI, net of taxes, as of June 25, 2011 and September 25, 2010 (in millions):

| | June 25, 2011 | September 25, 2010 |
|---|---|---|
| Net unrealized gains/losses on marketable securities | $ 232 | $ 171 |
| Net unrecognized gains/losses on derivative instruments | 21 | (252) |
| Cumulative foreign currency translation | 136 | 35 |
| Accumulated other comprehensive income/(loss) | $ 389 | $ (46) |

**Equity Awards**

A summary of the Company's RSU activity and related information for the nine months ended June 25, 2011, is as follows (in thousands, except per share amounts):

| | Number of Shares | Weighted-Average Grant Date Fair Value | Aggregate Intrinsic Value |
|---|---|---|---|
| Balance at September 25, 2010 | 13,034 | $ 165.63 | |
| RSUs granted | 5,232 | $ 296.08 | |
| RSUs vested | (4,224) | $ 166.49 | |
| RSUs cancelled | (609) | $ 183.53 | |
| Balance at June 25, 2011 | 13,433 | $ 215.35 | $ 4,383,924 |

RSUs that vested during the three- and nine-month periods ended June 25, 2011 had a fair value of $637 million and $1.4 billion, respectively, as of the vesting dates. RSUs that vested during the three- and nine-month periods ended June 26, 2010 had a fair value of $353 million and $990 million, respectively, as of the vesting dates.

A summary of the Company's stock option activity and related information for the nine months ended June 25, 2011, is as follows (in thousands, except per share amounts and contractual term in years):

| | Number of Shares | Weighted-Average Exercise Price | Weighted-Average Remaining Contractual Term | Aggregate Intrinsic Value |
|---|---|---|---|---|
| Balance at September 25, 2010 | 21,725 | $ 90.46 | | |
| Options granted | 1 | $ 342.62 | | |
| Options cancelled | (149) | $ 124.71 | | |
| Options exercised | (7,822) | $ 63.20 | | |
| Balance at June 25, 2011 | 13,755 | $ 105.62 | 2.54 | $ 3,036,128 |
| Exercisable at June 25, 2011 | 12,431 | $ 99.59 | 2.43 | $ 2,818,845 |
| Expected to vest after June 25, 2011 | 1,324 | $ 162.24 | 3.57 | $ 217,283 |

Aggregate intrinsic value represents the value of the Company's closing stock price on the last trading day of the fiscal period in excess of the weighted-average exercise price multiplied by the number of options outstanding or exercisable. The aggregate intrinsic value excludes stock options that have a zero or negative intrinsic value. The total intrinsic value of options at the time of exercise was $248 million and $2.1 billion for the three- and nine-month periods ended June 25, 2011, respectively, and $559 million and $1.6 billion for the three- and nine-month periods ended June 26, 2010, respectively.

The Company had approximately 53.6 million shares and 62.7 million shares reserved for future issuance under the Company's stock plans as of June 25, 2011 and September 25, 2010, respectively. RSUs granted are deducted from the shares available for grant under the Company's stock plans utilizing a factor of two times the number of RSUs granted. Similarly, RSUs cancelled are added back to the shares available for grant under the Company's stock plans utilizing a factor of two times the number of RSUs cancelled.

**Stock-Based Compensation**

Stock-based compensation cost for RSUs is measured based on the closing fair market value of the Company's common stock on the date of grant. Stock-based compensation cost for stock options and employee stock purchase plan rights ("stock purchase rights") is estimated at the grant date and offering date, respectively, based on the fair-value as calculated using the Black-Scholes Merton ("BSM") option-pricing model. The BSM option-pricing model incorporates various assumptions including expected volatility, expected life and interest rates. The expected volatility is based on the historical volatility of the Company's common stock over the most recent period commensurate with the expected life of the Company's stock options and other relevant factors including implied volatility in market traded options on the Company's common stock. The Company bases its expected life assumption on its historical experience and on the terms and conditions of the stock awards it grants to employees. The Company recognizes stock-based compensation cost as expense on a straight-line basis over the requisite service period.

The Company did not grant any stock options during the three-month periods ended June 25, 2011 and June 26, 2010. The Company granted 1,370 stock options with a weighted-average grant date fair value of $181.13 per share during the nine months ended June 25, 2011 and granted approximately 34,000 stock options with a weighted-average grant date fair value of $108.58 per share during the nine months ended June 26, 2010.

The Company did not assume any stock options during the three- and nine-month periods ended June 25, 2011. During the three- and nine-month periods ended June 26, 2010, the Company assumed 31,000 and 98,000 stock options, respectively, in conjunction with certain business combinations. The weighted-average fair value of stock options assumed during the three- and nine-month periods ended June 26, 2010 was $256.63 and $216.82, respectively.

The weighted-average fair value of stock purchase rights per share was $72.63 and $67.70 during the three- and nine-month periods ended June 25, 2011, respectively, and was $46.82 and $41.98 during the three- and nine-month periods ended June 26, 2010, respectively.

The following table summarizes the stock-based compensation expense included in the Condensed Consolidated Statements of Operations for the three- and nine-month periods ended June 25, 2011 and June 26, 2010 (in millions):

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | June 25, 2011 | June 26, 2010 | June 25, 2011 | June 26, 2010 |
| Cost of sales | $ 52 | $ 38 | $ 155 | $ 112 |
| Research and development | 119 | 80 | 336 | 240 |
| Selling, general and administrative | 113 | 101 | 379 | 303 |
| Total stock-based compensation expense | $ 284 | $ 219 | $ 870 | $ 655 |

The income tax benefit related to stock-based compensation expense was $113 million and $349 million for the three- and nine-month periods ended June 25, 2011, respectively, and $77 million and $238 million for the three- and nine-month periods ended June 26, 2010, respectively. As of June 25, 2011, the total unrecognized compensation cost related to outstanding stock options and RSUs was $2.3 billion, which the Company expects to recognize over a weighted-average period of 2.8 years.

**Employee Benefit Plans**

*Rule 10b5-1 Trading Plans*

During the third quarter of 2011, executive officers Timothy D. Cook, Peter Oppenheimer, D. Bruce Sewell and Jeffrey E. Williams, and directors William V. Campbell and Arthur D. Levinson had trading plans pursuant to Rule 10b5-1(c)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). A trading plan is a written document that pre-establishes the amounts, prices and dates (or a formula for determining the amounts, prices and dates) of future purchases or sales of the Company's stock, including the exercise and sale of employee stock options and shares acquired pursuant to the Company's employee stock purchase plan and upon vesting of RSUs.

**Note 6 – Commitments and Contingencies**

**Accrued Warranty and Indemnifications**

The following table summarizes changes in the Company's accrued warranties and related costs for the three- and nine-month periods ended June 25, 2011 and June 26, 2010 (in millions):

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | June 25, 2011 | June 26, 2010 | June 25, 2011 | June 26, 2010 |
| Beginning accrued warranty and related costs | $ 1,103 | $ 588 | $ 761 | $ 577 |
| Cost of warranty claims | (288) | (155) | (790) | (427) |
| Accruals for product warranty | 375 | 157 | 1,219 | 440 |
| Ending accrued warranty and related costs | $ 1,190 | $ 590 | $ 1,190 | $ 590 |

The Company generally does not indemnify end-users of its operating system and application software against legal claims that the software infringes third-party intellectual property rights. Other agreements entered into by the Company sometimes include indemnification provisions under which the Company could be subject to costs and/or damages in the event of an infringement claim against the Company or an indemnified third-party. However, the Company has not been required to make any significant payments resulting from such an infringement claim asserted against it or an indemnified third-party. In the opinion of management, there was not at least a reasonable possibility the Company may have incurred a material loss with respect to indemnification of end-users of its operating system or application software for infringement of third-party intellectual property rights. The Company did not record a liability for infringement costs related to indemnification as of either June 25, 2011 or September 25, 2010.

The Company has entered into indemnification agreements with its directors and executive officers. Under these agreements, the Company has agreed to indemnify such individuals to the fullest extent permitted by law against liabilities that arise by reason of their status as directors or officers and to advance expenses incurred by such individuals in connection with related legal proceedings. It is not possible to determine the maximum potential amount of payments the Company could be required to make under these agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each claim. However, the Company maintains directors and officers liability insurance coverage to reduce its exposure to such obligations, and payments made under these agreements historically have not been material.

**Concentrations in the Available Sources of Supply of Materials and Product**

Although most components essential to the Company's business are generally available from multiple sources, certain key components including but not limited to microprocessors, enclosures, certain liquid crystal displays ("LCDs"), certain optical drives and application-specific integrated circuits ("ASICs") are currently obtained by the Company from single or limited sources, which subjects the Company to significant supply and pricing risks. Many of these and other key components that are available from multiple sources including but not limited to NAND flash memory, dynamic random access memory ("DRAM") and certain LCDs, are subject at times to industry-wide shortages and significant commodity pricing fluctuations. In addition, the Company has entered into certain agreements for the supply of key components including, but not limited to, microprocessors, NAND flash memory, DRAM and LCDs with favorable pricing, but there can be no guarantee that the Company will be able to extend or renew these agreements on similar favorable terms, or at all, upon expiration or otherwise obtain favorable pricing in the future. Therefore, the Company remains subject to significant risks of supply shortages and/or price increases that can materially adversely affect its financial condition and operating results.

The Company and other participants in the mobile communication and media device, and personal computer industries also compete for various components with other industries that have experienced increased demand for their products. In addition, the Company uses some custom components that are not common to the rest of these industries, and new products introduced by the Company often utilize custom components available from only one source. When a component or product uses new technologies, initial capacity constraints may exist until the suppliers' yields have matured or manufacturing capacity has increased. If the Company's supply of a key single-sourced component for a new or existing product were delayed or constrained, if such components were available only at significantly higher prices, or if a key outsourcing partner delayed shipments of completed products to the Company, the Company's financial condition and operating results could be materially adversely affected. The Company's business and financial performance could also be adversely affected depending on the time required to obtain sufficient quantities from the original source, or to identify and obtain sufficient quantities from an alternative source. Continued availability of these components at acceptable prices, or at all, may be affected if those suppliers decided to concentrate on the production of common components instead of components customized to meet the Company's requirements.

Substantially all of the Company's iPhones, iPads, Macs, iPods, logic boards and other assembled products are manufactured by outsourcing partners, primarily in various parts of Asia. A significant concentration of this outsourced manufacturing is currently performed by only a few outsourcing partners of the Company, often in single locations. Certain of these outsourcing partners are the sole-sourced supplier of components and manufacturing outsourcing for many of the Company's key products including but not limited to final assembly of substantially all of the Company's hardware products. Although the Company works closely with its outsourcing partners on manufacturing schedules, the Company's operating results could be adversely affected if its outsourcing partners were unable to meet their production commitments. The Company's purchase commitments typically cover its requirements for periods ranging from 30 to 150 days.

**Long-Term Supply Agreements**

The Company has entered into long-term agreements to secure the supply of certain inventory components. These agreements generally expire between 2011 and 2022. As of June 25, 2011, the Company had a total of $2.4 billion of inventory component prepayments outstanding, of which $701 million are classified as other current assets and $1.7 billion are classified as other assets in the Condensed Consolidated Balance Sheets. The Company had a total of $956 million of inventory component prepayments outstanding as of September 25, 2010. The Company's outstanding prepayments will be applied to certain inventory component purchases made during the term of each respective agreement. As of June 25, 2011, the Company had off-balance sheet commitments under long-term supply agreements totaling approximately $1.7 billion to make additional inventory component prepayments and to acquire capital equipment in 2011 and beyond.

**Other Off-Balance Sheet Commitments**

The Company leases various equipment and facilities, including retail space, under noncancelable operating lease arrangements. The Company does not currently utilize any other off-balance sheet financing arrangements. The major facility leases are typically for terms not exceeding 10 years and generally provide renewal options for terms not exceeding five additional years. Leases for retail space are for terms ranging from five to 20 years, the majority of which are for 10 years, and often contain multi-year renewal options. As of June 25, 2011, the Company's total future minimum lease payments under noncancelable operating leases were $2.7 billion, of which $2.2 billion related to leases for retail space.

Additionally, as of June 25, 2011, the Company had outstanding off-balance sheet commitments for outsourced manufacturing and component purchases of $11.0 billion. Other outstanding obligations were $1.6 billion as of June 25, 2011, and were comprised mainly of commitments to acquire product tooling and manufacturing process equipment and commitments related to advertising, research and development, Internet and telecommunications services and other obligations. These commitments exclude the off-balance sheet commitments under the long-term supply agreements described above.

**Contingencies**

The Company is subject to various legal proceedings and claims that have arisen in the ordinary course of business and have not been fully adjudicated, which are discussed in Part II, Item 1 of this Form 10-Q under the heading "Legal Proceedings" and in Part II Item 1A under the heading "Risk Factors." In the opinion of management, there was not at least a reasonable possibility the Company may have incurred a material loss, or a material loss in excess of a recorded accrual, with respect to loss contingencies. However, the outcome of litigation is inherently uncertain. Therefore, although management considers the likelihood of such an outcome to be remote, if one or more of these legal matters were resolved against the Company in the same reporting period for amounts in excess of management's expectations, the Company's condensed consolidated financial statements of a particular reporting period could be materially adversely affected.

On March 14, 2008, Mirror Worlds, LLC filed an action against the Company alleging that certain of its products infringed on three patents covering technology used to display files. On October 1, 2010, a jury returned a verdict against the Company, and awarded damages of $208 million per patent for each of the three patents asserted. On April 4, 2011, the Judge overturned the verdict in the Company's favor. Mirror Worlds has appealed the ruling. The Company had not recorded a loss contingency for this action.

Production and marketing of products in certain states and countries may subject the Company to environmental, product safety and other regulations including, in some instances, the requirement to provide customers the ability to return product at the end of its useful life, and place responsibility for environmentally safe disposal or recycling with the Company. Such laws and regulations have been passed in several jurisdictions in which the Company operates, including various countries within Europe and Asia and certain states and provinces within North America. Although the Company does not anticipate any material adverse effects in the future based on the nature of its operations and the thrust of such laws, there can be no assurance that such existing laws or future laws will not materially adversely affect the Company's financial condition or operating results.

**Note 7 – Segment Information and Geographic Data**

The Company reports segment information based on the "management" approach. The management approach designates the internal reporting used by management for making decisions and assessing performance as the source of the Company's reportable segments.

The Company manages its business primarily on a geographic basis. Accordingly, the Company determined its operating and reporting segments, which are generally based on the nature and location of its customers, to be the Americas, Europe, Japan, Asia-Pacific and Retail operations. The Americas, Europe, Japan and Asia-Pacific reportable segment results do not include results of the Retail segment. The Americas segment includes both North and South America. The Europe segment includes European countries, as well as the Middle East and Africa. The Asia-Pacific segment includes Australia and Asia, but does not include Japan. The Retail segment operates Apple retail stores in 11 countries, including the U.S. Each reportable operating segment provides similar hardware and software products and similar services. The accounting policies of the various segments are the same as those described in Note 1, "Summary of Significant Accounting Policies" of this Form 10-Q and in the Notes to Consolidated Financial Statements in the Company's 2010 Form 10-K.

The Company evaluates the performance of its operating segments based on net sales and operating income. Net sales for geographic segments are generally based on the location of customers, while Retail segment net sales are based on sales from the Company's retail stores. Operating income for each segment includes net sales to third parties, related cost of sales and operating expenses directly attributable to the segment. Advertising expenses are generally included in the geographic segment in which the advertising occurs. Operating income for each segment excludes other income and expense and certain expenses managed outside the operating segments. Costs excluded from segment operating income include various corporate expenses such as manufacturing costs and variances not included in standard costs, research and development, corporate marketing expenses, stock-based compensation expense, income taxes, various nonrecurring charges, and other separately managed general and administrative costs. The Company does not include intercompany transfers between segments for management reporting purposes. Segment assets exclude corporate assets, such as cash, cash equivalents, short-term and long-term investments, manufacturing and corporate facilities, miscellaneous corporate infrastructure, goodwill and other acquired intangible assets. Except for the Retail segment, capital expenditures for long-lived assets are not reported to management by segment.

The Company has certain retail stores that have been designed and built to serve as high-profile venues to promote brand awareness and serve as vehicles for corporate sales and marketing activities. Because of their unique design elements, locations and size, these stores require substantially more investment than the Company's more typical retail stores. The Company allocates certain operating expenses associated with its high-profile stores to corporate expense to reflect the estimated Company-wide benefit. The allocation of these operating costs to corporate expense is based on the amount incurred for a high-profile store in excess of that incurred by a more typical Company retail location. The Company had opened a total of 16 high-profile stores as of June 25, 2011. Amounts allocated to corporate expense resulting from the operations of high-profile stores were $26 million and $75 million during the three- and nine-month periods ended June 25, 2011, respectively, and $18 million and $54 million during the three- and nine-month periods ended June 26, 2010, respectively.

Summary information by operating segment for the three- and nine-month periods ended June 25, 2011 and June 26, 2010 is as follows (in millions):

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | June 25, 2011 | June 26, 2010 | June 25, 2011 | June 26, 2010 |
| Americas: | | | | |
| Net sales | $ 10,126 | $ 6,227 | $ 28,667 | $ 17,312 |
| Operating income | $ 3,596 | $ 1,997 | $ 10,250 | $ 5,482 |
| Europe: | | | | |
| Net sales | $ 7,098 | $ 4,160 | $ 20,381 | $ 13,234 |
| Operating income | $ 3,107 | $ 1,631 | $ 8,414 | $ 5,457 |
| Japan: | | | | |
| Net sales | $ 1,510 | $ 910 | $ 4,326 | $ 2,580 |
| Operating income | $ 735 | $ 390 | $ 1,996 | $ 1,185 |
| Asia-Pacific: | | | | |
| Net sales | $ 6,332 | $ 1,825 | $ 16,062 | $ 5,524 |
| Operating income | $ 2,782 | $ 841 | $ 6,869 | $ 2,553 |
| Retail: | | | | |
| Net sales | $ 3,505 | $ 2,578 | $ 10,543 | $ 6,232 |
| Operating income | $ 828 | $ 593 | $ 2,665 | $ 1,447 |

A reconciliation of the Company's segment operating income to the condensed consolidated financial statements for the three- and nine-month periods ended June 25, 2011 and June 26, 2010 is as follows (in millions):

| | Three Months Ended | | Nine Months Ended | |
|---|---|---|---|---|
| | June 25, 2011 | June 26, 2010 | June 25, 2011 | June 26, 2010 |
| Segment operating income | $ 11,048 | $ 5,452 | $ 30,194 | $ 16,124 |
| Stock-based compensation expense | (284) | (219) | (870) | (655) |
| Other corporate expenses, net (a) | (1,385) | (999) | (4,244) | (2,531) |
| Total operating income | $ 9,379 | $ 4,234 | $ 25,080 | $ 12,938 |

(a) Other corporate expenses include research and development, corporate marketing expenses, manufacturing costs and variances not included in standard costs, and other separately managed general and administrative expenses, including certain corporate expenses associated with support of the Retail segment.

**Note 8 – Related Party Transactions and Certain Other Transactions**

In 2001, the Company entered into a Reimbursement Agreement with its CEO, Steve Jobs, for the reimbursement of expenses incurred by Mr. Jobs in the operation of his private plane when used for Apple business. The Company did not recognize any expenses pursuant to the Reimbursement Agreement during the three months ended June 25, 2011 and recognized a total of $15,000 in expenses pursuant to the Reimbursement Agreement during the nine months ended June 25, 2011. The Company recognized a total of $12,000 and $155,000 in expenses pursuant to the Reimbursement Agreement during the three- and nine-month periods ended June 26, 2010, respectively. All expenses recognized pursuant to the Reimbursement Agreement have been included in selling, general and administrative expenses in the Condensed Consolidated Statements of Operations.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

*This section and other parts of this Form 10-Q contain forward-looking statements that involve risks and uncertainties. Forward-looking statements can be identified by words such as "anticipates," "expects," "believes," "plans," "predicts," and similar terms. Forward-looking statements are not guarantees of future performance and the Company's actual results may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part II, Item 1A, "Risk Factors," which are incorporated herein by reference. The following discussion should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended September 25, 2010 (the "2010 Form 10-K") filed with the U.S. Securities and Exchange Commission ("SEC") and the condensed consolidated financial statements and notes thereto included elsewhere in this Form 10-Q. All information presented herein is based on the Company's fiscal calendar. Unless otherwise stated, references in this report to particular years or quarters refer to the Company's fiscal years ended in September and the associated quarters of those fiscal years. The Company assumes no obligation to revise or update any forward-looking statements for any reason, except as required by law.*

**Available Information**

The Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended ("Exchange Act") are filed with the SEC. Such reports and other information filed by the Company with the SEC are available on the Company's website at http://www.apple.com/investor when such reports are available on the SEC website. The public may read and copy any materials filed by the Company with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Room 1580, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy, and information statements and other information regarding issuers that file electronically with the SEC at http://www.sec.gov . The contents of these websites are not incorporated into this filing. Further, the Company's references to the URLs for these websites are intended to be inactive textual references only.

**Executive Overview**

The Company designs, manufactures, and markets a range of mobile communication and media devices, personal computers, and portable digital music players, and sells a variety of related software, services, peripherals, networking solutions, and third-party digital content and applications. The Company's products and services include iPhone ®, iPad ®, Mac ®, iPod ®, Apple TV ®, a portfolio of consumer and professional software applications, the iOS and Mac OS ® X operating systems, iCloud ®, and a variety of related accessories, services and support offerings. The Company also sells and delivers third-party digital content and applications through the iTunes Store ®, App Store SM, iBookstore SM, and Mac App Store SM. The Company sells its products worldwide through its retail stores, online stores, and direct sales force, as well as through third-party cellular network carriers, wholesalers, retailers, and value-added resellers. In addition, the Company sells a variety of third-party iPhone, iPad, Mac and iPod compatible products, including application software, printers, storage devices, speakers, headphones, and various other accessories and peripherals through its online and retail stores. The Company sells to consumers, small and mid-sized businesses, education, enterprise and government customers.

The Company is committed to bringing the best user experience to its customers through its innovative hardware, software, peripherals, services, and Internet offerings. The Company's business strategy leverages its unique ability to design and develop its own operating systems, hardware, application software, and services to provide its customers new products and solutions with superior ease-of-use, seamless integration, and innovative industrial design. The Company believes continual investment in research and development is critical to the development and enhancement of innovative products and technologies. In conjunction with its strategy, the Company continues to build and host a robust platform for the discovery and delivery of third-party digital content and applications through the iTunes Store. Within the iTunes Store, the Company has expanded its offerings through the App Store and iBookstore, which allow customers to browse, search for, and purchase third-party applications and books through either a Mac or Windows-based computer or by wirelessly downloading directly to an iPhone, iPad or iPod touch ®. In January 2011, the Company opened the Mac App Store allowing customers to easily find, download and install Apple-branded and third-party applications for their Macs. The Company also works to support a community for the development of third-party software and hardware products and digital content that complement the Company's offerings. Additionally, the Company's strategy includes expanding its distribution network to effectively reach more customers and provide them with a high-quality sales and post-sales support experience. The Company is therefore uniquely positioned to offer superior and well-integrated digital lifestyle and productivity solutions.

The Company participates in several highly competitive markets, including mobile communications and media devices with its iPhone, iPad and iPod product families; personal computers with its Mac computers; and distribution of third-party digital content and applications through the iTunes Store, App Store, iBookstore, and Mac App Store. While the Company is widely recognized as a leading innovator in the markets where it competes, these markets are highly competitive and subject to aggressive pricing. To remain competitive, the Company believes that increased investment in research and development and marketing and advertising is necessary to maintain or expand its position in the markets where it competes. The Company's research and development spending is focused on investing in new hardware and software products, and in further developing its existing products, including iPhone, iPad, Mac, and iPod hardware; iOS and Mac OS X operating systems; and a variety of application software and online services. The Company also believes increased investment in marketing and advertising programs is critical to increasing product and brand awareness.

The Company utilizes a variety of direct and indirect distribution channels, including its retail stores, online stores, and direct sales force, and third-party cellular network carriers, wholesalers, retailers, and value-added resellers. The Company believes that sales of its innovative and differentiated products are enhanced by knowledgeable salespersons who can convey the value of the hardware, software, and peripheral integration, demonstrate the unique digital lifestyle solutions that are available on its products, and demonstrate the compatibility of the Mac with the Windows-based platform and networks. The Company further believes providing direct contact with its targeted customers is an effective way to demonstrate the advantages of its products over those of its competitors and providing a high-quality sales and after-sales support experience is critical to attracting new and retaining existing customers. To ensure a high-quality buying experience for its products in which service and education are emphasized, the Company continues to expand and improve its distribution capabilities by expanding the number of its own retail stores worldwide. Additionally, the Company has invested in programs to enhance reseller sales by placing high quality Apple fixtures, merchandising materials and other resources within selected third-party reseller locations. Through the Apple Premium Reseller Program, certain third-party resellers focus on the Apple platform by providing a high level of integration and support services, and product expertise.

**Products**

The Company offers a range of mobile communication and media devices, personal computing products, and portable digital music players, as well as a variety of related software, services, peripherals, networking solutions and various third-party hardware and software products. In addition, the Company offers its own software products, including iOS, the Company's proprietary mobile operating system; Mac OS X, the Company's proprietary operating system software for its Mac computers; server software; and application software for consumer, education, and business customers.

In June 2011, the Company introduced iCloud, its new cloud service, which stores music, photos, apps, contacts, calendars, and documents and wirelessly pushes them to multiple iOS devices, Macs and PCs. iCloud includes iTunes in the Cloud, Photo Stream, Documents in the Cloud, Contacts, Calendar, Mail, Automatic downloads and purchase history for apps and books, and Backup. Users will be able to sign up for free access to iCloud using an iOS device running iOS 5 or a Mac running Mac OS ® X Lion ("Mac OS X Lion"). iCloud is expected to be available in the fall of 2011.

In June 2011, the Company previewed iOS 5, the latest version of its mobile operating system. iOS 5 includes new features such as Notification Center, a way to view and manage notifications in one place; iMessage, a messaging service that allows users to send text messages, photos and videos between iOS devices; and Newsstand, a way to purchase and organize newspaper and magazine subscriptions. iOS 5 is expected to be available in the fall of 2011.

In June 2011, the Company announced Mac OS X Lion, the eighth major release of the Company's Mac operating system. Mac OS X Lion includes support for new Multi-Touch™ gestures; system-wide support for full screen applications; Mission Control, a way to view everything running on a user's Mac; the Mac App Store; Launchpad, a new home for a user's applications; and a redesigned Mail application. Mac OS X Lion was made available in July 2011.

A detailed discussion of the Company's other products may be found in Part I, Item 1, "Business," of the Company's 2010 Form 10-K.

**Japan Earthquake and Tsunami**

On March 11, 2011, the northeast coast of Japan experienced a severe earthquake followed by a tsunami, with continuing aftershocks. These geological events have caused significant damage in the region, including severe damage to nuclear power plants, and have impacted Japan's power and other infrastructure as well as its economy. Certain of the Company's suppliers are located in Japan, and certain of its other suppliers integrate components or use materials manufactured in Japan in the production of its products. To the extent that component production has been affected, the Company has generally obtained alternative sources of supply or implemented other measures. The Company does not currently believe these events will have a material impact on its operations in the fourth quarter of 2011 unless conditions worsen, including, but not limited to, power outages and expansion of evacuation zones around the nuclear power plants.

Beyond the fourth quarter of 2011, uncertainty exists with respect to the availability of electrical power, the damage to nuclear power plants and the impact to other infrastructure. Thus, there is a risk that the Company could in the future experience delays or other constraints in obtaining key components and products and/or price increases related to such components and products that could materially adversely affect the Company's financial condition and operating results.

**Critical Accounting Policies and Estimates**

The preparation of financial statements and related disclosures in conformity with U.S. generally accepted accounting principles ("GAAP") and the Company's discussion and analysis of its financial condition and operating results require the Company's management to make judgments, assumptions, and estimates that affect the amounts reported in its condensed consolidated financial statements and accompanying notes. Note 1, "Summary of Significant Accounting Policies" of this Form 10-Q and in the Notes to Consolidated Financial Statements in the Company's 2010 Form 10-K describes the significant accounting policies and methods used in the preparation of the Company's condensed consolidated financial statements. Management bases its estimates on historical experience and on various other assumptions it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates and such differences may be material.

Management believes the Company's critical accounting policies and estimates are those related to revenue recognition, valuation and impairment of marketable securities, inventory valuation and inventory purchase commitments, warranty costs, income taxes, and legal and other contingencies. Management considers these policies critical because they are both important to the portrayal of the Company's financial condition and operating results, and they require management to make judgments and estimates about inherently uncertain matters. The Company's senior management has reviewed these critical accounting policies and related disclosures with the Audit and Finance Committee of the Company's Board of Directors.

*Revenue Recognition*

Net sales consist primarily of revenue from the sale of hardware, software, digital content and applications, peripherals, and service and support contracts. The Company recognizes revenue when persuasive evidence of an arrangement exists, delivery has occurred, the sales price is fixed or determinable, and collection is probable. Product is considered delivered to the customer once it has been shipped and title and risk of loss have been transferred. For most of the Company's product sales, these criteria are met at the time the product is shipped. For online sales to individuals, for some sales to education customers in the U.S., and for certain other sales, the Company defers recognition of revenue until the customer receives the product because the Company retains a portion of the risk of loss on these sales during transit. The Company recognizes revenue from the sale of hardware products (e.g., iPhones, iPads, Macs, iPods and peripherals), software bundled with hardware that is essential to the functionality of the hardware, and third-party digital content sold on the iTunes Store in accordance with general revenue recognition accounting guidance. The Company recognizes revenue in accordance with industry specific software accounting guidance for the following types of sales transactions: (i) standalone sales of software products, (ii) sales of software upgrades and (iii) sales of software bundled with hardware not essential to the functionality of the hardware.

For multi-element arrangements that include tangible products containing software essential to the tangible product's functionality, undelivered software elements relating to the tangible product's essential software, and undelivered non-software services, the Company allocates revenue to all deliverables based on their relative selling prices. In such circumstances, the Company uses a hierarchy to determine the selling price to be used for allocating revenue to deliverables: (i) vendor-specific objective evidence of fair value ("VSOE"), (ii) third-party evidence of selling price ("TPE") and (iii) best estimate of the selling price ("ESP"). VSOE generally exists only when the Company sells the deliverable separately and is the price actually charged by the Company for that deliverable. ESPs reflect the Company's best estimates of what the selling prices of elements would be if they were sold regularly on a stand-alone basis.

For sales of iPhone, iPad, Apple TV, for sales of iPod touch beginning in June 2010, and for sales of Mac beginning in June 2011, the Company has indicated it may from time-to-time provide future unspecified software upgrades and features free of charge to customers. In June 2011, the Company announced it would provide various non-software services ("the online services") to owners of qualifying versions of iPhone, iPad, iPod touch and Mac. Because the Company has neither VSOE nor TPE for embedded unspecified software upgrade rights or the online services, revenue is allocated to these rights and services based on the Company's ESPs. Amounts allocated to the embedded unspecified software upgrade rights and online services are deferred and recognized on a straight-line basis over the estimated lives of each of these devices, which range from 24 to 48 months. The Company's process for determining ESPs involves management's judgment. The Company's process considers multiple factors that may vary over time depending upon the unique facts and circumstances related to each deliverable. If the facts and circumstances underlying the factors considered change or should future facts and circumstances lead the Company to consider additional factors, the Company's ESP for software upgrades and online services related to future sales of these devices could change. If the estimated life of one or more of the hardware products should change, the future rate of amortization of the revenue allocated to the software upgrade rights would also change.

The Company records reductions to revenue for estimated commitments related to price protection and for customer incentive programs, including reseller and end-user rebates, and other sales programs and volume-based incentives. For transactions involving price protection, the Company recognizes revenue net of the estimated amount to be refunded, provided the refund amount can be reasonably and reliably estimated and the other conditions for revenue recognition have been met. The Company's policy requires that, if refunds cannot be reliably estimated, revenue is not recognized until reliable estimates can be made or the price protection lapses. For customer incentive programs, the estimated cost of these programs is recognized at the later of the date at which the Company has sold the product or the date at which the program is offered. The Company also records reductions to revenue for expected future product returns based on the Company's historical experience. Future market conditions and product transitions may require the Company to increase customer incentive programs and incur incremental price protection obligations that could result in additional reductions to revenue at the time such programs are offered. Additionally, certain customer incentive programs require management to estimate the number of customers who will actually redeem the incentive. Management's estimates are based on historical experience and the specific terms and conditions of particular incentive programs. If a greater than estimated proportion of customers redeem such incentives, the Company would be required to record additional reductions to revenue, which would have a negative impact on the Company's results of operations.

*Valuation and Impairment of Marketable Securities*

The Company's investments in available-for-sale securities are reported at fair value. Unrealized gains and losses related to changes in the fair value of investments are included in accumulated other comprehensive income, net of tax, as reported in the Company's Condensed Consolidated Balance Sheets. Changes in the fair value of investments impact the Company's net income only when such investments are sold or an other-than-temporary impairment is recognized. Realized gains and losses on the sale of securities are determined by specific identification of each security's cost basis. The Company regularly reviews its investment portfolio to determine if any investment is other-than-temporarily impaired due to changes in credit risk or other potential valuation concerns, which would require the Company to record an impairment charge in the period any such determination is made. In making this judgment, the Company evaluates, among other things, the duration and extent to which the fair value of an investment is less than its cost, the financial condition of the issuer and any changes thereto, and the Company's intent to sell, or whether it is more likely than not it will be required to sell, the investment before recovery of the investment's amortized cost basis. The Company's assessment on whether an investment is other-than-temporarily impaired or not, could change in the future due to new developments or changes in assumptions related to any particular investment.