

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

	X	
	:	Chapter 11
<i>In re</i>	:	
	:	Case No. 09-10138(KG)
Nortel Networks Inc., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	Hearing Date: May 5, 2015 at 10:00 a.m.
	:	Objections Due: April 28, 2015 at 4:00 p.m.

**DEBTORS' MOTION FOR ENTRY OF THIRD DISCOVERY PROTOCOL  
IMPLEMENTING THE COURT'S PREVIOUS ORDERS EXTENDING AUTOMATIC  
STAY AND REGULATING THIRD-PARTY DISCOVERY**

Pursuant to Sections 105(a), 107(b), 362(a), and 541 of the Bankruptcy Code, Bankruptcy Rule 9018, and the Order Extending Automatic Stay and Regulating Third-Party Discovery [D.I. 14746], Nortel Networks Inc. ("NNI") and certain of its affiliates (collectively, the "Debtors") hereby move this Court for entry of an order, substantially in the form attached hereto as Exhibit A, adopting a Third Discovery Protocol to govern third-party discovery against the Debtors in connection with patent litigations not already covered by the Second Discovery Protocol adopted by the Court on December 8, 2014 [D.I. 14906].

**INTRODUCTION**

1. Four months ago, in response to Debtors' request for protection from the extraordinary burden and expense of responding to nearly 20 third-party subpoenas seeking

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<sup>1</sup> 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). Contact information for the U.S. Debtors and their petitions are available at <http://dm.epiq11.com/nortel>.

documents and testimony in connection with patent infringement litigations involving a subset of the patent portfolio that Debtors and other Nortel entities had previously sold to Rockstar Bidco, LP (“Rockstar Bidco”), this Court adopted a Second Discovery Protocol jointly developed by Debtors, Rockstar Bidco’s successors-in-interest to certain former Nortel patents (collectively, “Rockstar”), and various litigants then seeking third-party discovery from Debtors.<sup>2</sup>

2. The Second Discovery Protocol includes detailed procedures designed to manage the burden and expense of third-party discovery against Debtors in connection with litigations involving any of the patents that Nortel had sold to Rockstar. Importantly from Debtors’ perspective, the Second Discovery Protocol established streamlined procedures for the production of documents that potentially contained third-party confidential and/or privileged information. In essence, so long as Debtors comply with the provisions of the Second Discovery Protocol before producing any such documents, including the requirement to provide notice and an opportunity to object to interested parties, Debtors are relieved of any potential liability that might arise as a result of disclosing such documents.

3. Upon entry of the Second Discovery Protocol as an order of the Court in December, 2014, Debtors proceeded to follow the provisions of the Second Discovery Protocol in connection with the numerous third-party discovery requests they had received, and indeed are continuing to do so today with respect to a number of pending requests. However, shortly thereafter, Debtors were informed by the requesting parties not only that the Rockstar-related litigations were in the process of settling, but also that Rockstar had agreed to sell the patents it had purchased from Nortel to RPX Corporation (“RPX”), a defensive “patent aggregator.” Each

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<sup>2</sup> The Court had previously entered a First Discovery Protocol [D.I. 14746-1] in connection with the Order Extending Automatic Stay and Regulating Third-Party Discovery [D.I. 14746], establishing interim procedures for pending third-party discovery requests against Debtors.

of the Rockstar-related litigations in which third-party subpoenas had been served on Debtors was stayed and ultimately dismissed, relieving Debtors of any further discovery obligations in those cases.

4. The resolution of the Rockstar-related litigations did not, however, relieve Debtors of all third-party discovery obligations. For instance, Debtors had been served with third-party discovery requests in connection with two litigations involving patents being asserted by Spherix Incorporated (“Spherix”). Spherix apparently had acquired certain of the former Nortel patents from Rockstar prior to the agreement between Rockstar and RPX. The Spherix patents qualify as “Former Nortel Patents” under the Second Discovery Protocol, and thus third-party discovery of Debtors in connection with the Spherix-related litigations was, and continues to be, governed by the Second Discovery Protocol.

5. Subsequent to the adoption of the Second Discovery Protocol, Debtors were contacted by counsel for Metaswitch Networks Ltd. and Metaswitch Networks Corp. (collectively, “Metaswitch”) regarding Metaswitch’s desire to take third-party discovery of Debtors in connection with certain litigations involving patents being asserted by Genband US LLC (“Genband”). Genband had acquired those patents from Debtors and other Nortel entities through an Asset Sale Agreement approved by this Court on March 4, 2010 [D.I. 2632]. Accordingly, those patents are not “Former Nortel Patents” as defined in the Second Discovery Protocol, and thus the Second Discovery Protocol does not apply to Metaswitch’s current requests for third-party discovery from Debtors.

6. Metaswitch’s current third-party discovery requests raise precisely the same issues of burden, expense, and potential liability to third parties arising from the production of confidential and/or privileged documents that led this Court to adopt the Second Discovery

Protocol. Moreover, Genband is just one of several entities that purchased Nortel business lines and related assets, including patents, in connection with these Insolvency Proceedings (as defined below), and thus it is likely that Debtors will be faced with similar third-party discovery requests in future litigations that likewise do not involve the “Former Nortel Patents” sold to Rockstar, and which therefore also fall outside the scope of the Second Discovery Protocol.

7. Accordingly, for precisely the same reasons that this Court adopted the Second Discovery Protocol, Debtors ask this Court to adopt the Third Discovery Protocol to apply substantially the same procedures and protections to pending and future third-party discovery requests involving patents that Nortel sold to entities other than Rockstar.

### **JURISDICTION**

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the February 29, 2012 Amended Standing Order of Reference from the U.S. District Court for the District of Delaware (the “District Court”). Moreover, this Court has exclusive jurisdiction pursuant to 28 U.S.C. § 1334(e) over Debtors’ property and property of their estates, including Debtors’ books and records. This matter is a core proceeding under 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory bases for the relief requested herein are Sections 105(a), 107(b), 362(a), and 541 of the Bankruptcy Code, and Bankruptcy Rule 9018.

### **FACTUAL BACKGROUND**

#### **A. The Insolvency Proceedings**

10. On January 14, 2009 (the “Petition Date”), Debtors, other than Nortel Networks (CALA) Inc. (“NN CALA”), filed voluntary petitions for relief under Chapter 11 of the

Bankruptcy Code in this Court.<sup>3</sup> The cases (the “Chapter 11 Cases”) are consolidated for procedural purposes only. Debtors continue to operate as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

11. The U.S. Trustee has appointed an Official Committee of Unsecured Creditors (the “Committee”) for Debtors [D.I. 141, 142], and an ad hoc group of bondholders has been organized (the “Bondholder Group”).

12. On the Petition Date, Debtors’ ultimate corporate parent Nortel Networks Corporation (“NNC”), NNI’s direct corporate parent Nortel Networks Limited (“NNL,” and together with NNC and their affiliates, including Debtors, “Nortel”), and certain of their Canadian affiliates (collectively, the “Canadian Debtors”)<sup>4</sup> commenced proceedings seeking relief from their creditors (collectively, the “Canadian Proceedings”) in the Ontario Superior Court of Justice (the “Canadian Court”) under the Companies’ Creditors Arrangement Act (Canada). The Canadian Court appointed Ernst & Young Inc. as a monitor (the “Monitor”). Also on the Petition Date, the High Court of Justice in England and Wales (the “English Court”) placed nineteen of Nortel’s European affiliates, including Nortel Networks UK Limited (“NNUK”) and certain of its affiliates located in Europe, the Middle East, and Africa (collectively, the “EMEA Debtors”),<sup>5</sup> into administration (the “UK Proceedings”) under the

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<sup>3</sup> NN CALA filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on July 14, 2009, which was consolidated and is being jointly administered with the other Debtors’ Chapter 11 cases for procedural purposes [D.I. 1098].

<sup>4</sup> The Canadian Debtors include the following entities: NNC,>NNL, Nortel Networks Technology Corporation, Nortel Networks Global Corporation, and Nortel Networks International Corporation.

<sup>5</sup> The EMEA Debtors include the following entities:>NNUK, Nortel Networks S.A., Nortel Networks (Ireland) Limited, Nortel GmbH, Nortel Networks France S.A.S., Nortel Networks Oy, Nortel Networks Romania SRL, Nortel Networks AB, Nortel Networks N.V., Nortel Networks S.p.A., Nortel Networks B.V., Nortel Networks Polska Sp. z.o.o., Nortel Networks Hispania, S.A., Nortel Networks (Austria) GmbH, Nortel Networks, s.r.o., Nortel Networks Engineering Service Kft, Nortel Networks

control of court-appointed administrators and foreign representatives (the “Joint Administrators”). Other Nortel affiliates have commenced and in the future may commence additional creditor protection, insolvency, and dissolution proceedings around the world (collectively, with the Chapter 11 Cases, the Canadian Proceedings, and the UK Proceedings, the “Insolvency Proceedings”).

**B. Establishment Of The Current Protocols Governing Third-Party Discovery**

13. On October 7, 2014, after having been served with nearly 20 third-party subpoenas in connection with various patent infringement suits involving patents that Debtors and other Nortel entities sold to Rockstar Bidco, Debtors sought relief from the burden, expense, and potential third-party liability of responding to those subpoenas in their Motion for (A) an Order Enforcing and/or Extending the Automatic Stay, (B) an Order Enforcing the Court’s Prior Orders, (C) a Protective Order, and (D) Related Relief Under Section 105(a) [D.I. 14535] (“Motion to Extend Automatic Stay”).<sup>6</sup>

14. On November 10, 2014, the Court granted the Motion to Extend Automatic Stay, explaining that:

The Court has authority pursuant to Sections 362(a) and 105 of the Bankruptcy Code to grant the relief requested and such relief is necessary and appropriate. Exposing Debtors and affiliated persons and entities to multiple discovery requests in actions pending in multiple jurisdictions without a discovery plan and the Court’s supervision will expose Debtors and their estates to time and expense which will reduce estate assets. At the same time, the Court must take into account the legitimate interests of third parties who are defending their interests in pending litigation. By this Order and the Court’s continuing oversight, the Court is attempting to balance all parties’ interests.<sup>7</sup>

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Portugal S.A., Nortel Networks Slovensko, s.r.o. and Nortel Networks International Finance & Holding B.V.

<sup>6</sup> The motion was originally filed on September 26, 2014 [D.I. 14476], but was then withdrawn and re-filed on October 7, 2014.

<sup>7</sup> Order Extending Automatic Stay and Regulating Third-Party Discovery, ¶ 1 [D.I. 14746] (“Order Regulating Third-Party Discovery”).

15. The Order Regulating Third-Party Discovery relieved Debtors and certain others from any obligation to respond to third-party subpoenas or other discovery requests except as specified by the Court:

The automatic stay is hereby enforced and extended to protect Debtors, their property, and property of the estate, wherever located and by whomever held, from all third-party subpoenas that have been served on or will in the future be served on Debtors, their counsel, Debtors' former employees (the "Former Employees"), and/or other advisors and professionals retained by the estate in these proceedings (including, but not limited to, Global IP Law Group and Lazard Frères & Co. LLC) and the respective former employees of any such advisors and professionals (each, an "Advisor"), such that Debtors, their counsel, the Former Employees, and the Advisors shall not be obligated to respond to or comply with any now pending or future third-party subpoenas or other discovery requests (collectively, the "Third Party Subpoenas"), except as set forth herein and in subsequent orders.<sup>8</sup>

16. The Order Regulating Third-Party Discovery also required that "Debtors, Rockstar and the Parties requesting the subpoenas (the 'Requesting Parties') shall meet and confer and attempt to develop a discovery protocol for pending and future third-party discovery of Debtors and affiliates, including the management of confidential information."<sup>9</sup>

17. On December 2, 2014, in accordance with the Order Regulating Third-Party Discovery, Debtors filed their Submission of Proposed Protocol for Third-Party Discovery Against Debtors [D.I. 14856], attaching as Exhibit A thereto a proposed Second Discovery Protocol [D.I. 14856-1].

18. On December 8, 2014, the Court entered an Order Approving Second Discovery Protocol in Connection with Order Extending Automatic Stay and Regulating Third Party

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<sup>8</sup> *Id.* at ¶ 2.

<sup>9</sup> *Id.* at ¶ 3.

Discovery [D.I. 1490], thereby approving and adopting the proposed Second Discovery Protocol [D.I. 14906-1] as an order of the Court.

19. By its express terms, the Second Discovery Protocol governs only “third-party discovery of Debtors in connection with litigation involving *Former Nortel Patents*,” defined as “patents sold to Rockstar Bidco, LP through the Asset Sale Agreement dated June 30, 2011 (the ‘Nortel-Rockstar ASA’), regardless of the current owner of such patents.”<sup>10</sup>

### **C. Sales Of Nortel Businesses And Assets**

20. Soon after commencement of the Insolvency Proceedings, the various companies comprising the Nortel group pursued an orderly and coordinated sale of certain Nortel business lines and related assets. In furtherance of those efforts, Debtors, the Canadian Debtors, and certain of the EMEA Debtors entered into an Interim Funding and Settlement Agreement, dated as of June 9, 2009 (the “IFSA”).<sup>11</sup> Following a joint hearing on June 29, 2009, the IFSA was approved by this Court<sup>12</sup> and the Canadian Court. Among other things, the parties to the IFSA agreed to not condition the sale of Nortel’s businesses and assets on a prior agreement among the selling parties regarding the allocation of the ultimate sales proceeds from the relevant sale transactions and to hold all such sale proceeds (with accrued interest, the “Sale Proceeds”) in escrow accounts until an allocation methodology was agreed upon or resolved pursuant to the IFSA.<sup>13</sup>

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<sup>10</sup> Second Discovery Protocol at 1 (emphasis added).

<sup>11</sup> See Motion Pursuant to 11 U.S.C. § 105(a), § 363, § 503 and Fed. R. Bankr. P. 9019 for an Order (A) Approving the Interim Funding and Settlement Agreement, and (B) Granting Related Relief [D.I. 874], Exhibit B.

<sup>12</sup> D.I. 993.

<sup>13</sup> See IFSA, ¶¶ 12(a), (b).



21. With this framework in place, from 2009 to 2011 Nortel conducted an extensive series of court-approved sale transactions generating more than \$7.3 billion in net sale proceeds. Specifically, assets of various business lines (including Nortel's considerable patent portfolio) were sold with the Court's approval. In each Sale Order, the Court retained jurisdiction of matters relating to the enforcement and implementation of the orders.<sup>14</sup>

22. In connection with each of the nine sale transactions, Debtors and other Nortel entities established electronic data rooms with confidential diligence materials. As each data room was created, Debtors searched for, collected, and included in the electronic data rooms relevant documents and information for each respective sale process. Access to the confidential

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<sup>14</sup> The nine "Sale Orders" are: (i) Order Authorizing and Approving (A) Sale of Certain Non-Core Assets Free and Clear of All Liens, Claims and Encumbrances and (B) Assumption and Assignment of Certain Contracts, ¶ 25, entered 3/26/09 [D.I. 539]; (ii) Order Authorizing and Approving (A) the Sale of Certain Assets of the Debtors' CDMA and LTE Business Free and Clear of All Liens, Claims and Encumbrances, (B) the Assumption and Assignment of Contracts and (C) the Assumption and Sublease of Certain Leases ("CDMA/LTE Sale Order"), ¶ 45, entered 7/28/09 [D.I. 1205]; (iii) Order Authorizing and Approving (A) the Sale of Certain Assets of, and Equity Interests in, Debtors' Enterprise Solutions Business, (B) the Assumption and Assignment of Certain Contracts and Leases and (C) the Assumption and Sublease of Certain Leases ("Enterprise Sale Order"), ¶ 18, entered 9/16/09 [D.I. 1514]; (iv) Order Authorizing and Approving Sale of Debtors' Next Generation Packet Core Network Components Free and Clear of All Liens, Claims and Interests, ¶ 22, entered 10/28/09 [D.I. 1760]; (v) Order Authorizing and Approving Sale of Debtors' GSM/GSM-R Free and Clear of All Liens, Claims and Encumbrances, ¶ 36, entered 12/3/09 [D.I. 2065]; (vi) Order Authorizing and Approving (A) the Sale of Certain Assets of the Debtors' Carrier Voice Over IP and Communications Solutions Business Free and Clear of All Liens, Claims and Encumbrances, and (B) the Assumption and Assignment of Certain Executory Contracts ("CVAS Sale Order"), ¶ 32, entered 3/4/10 [D.I. 2632]; (vii) Order (I) Authorizing the Sale of Certain Assets of Debtors' GSM/GSM-R Business Free and Clear of All Liens, Claims and Encumbrances; (II) Authorizing and Approving the Asset Sale Agreement; (III) Authorizing and Approving the Assumption and Assignment of Certain Executory Contracts; and (IV) Authorizing the Filing of Certain Documents Under Seal, ¶ 33, entered 5/24/10 [D.I. 3048]; (viii) Order Authorizing and Approving (A) the Sale of Certain Assets of Debtors' Multi-Service Switch (Formerly Known As "Passport") Business Free and Clear of All Liens, Claims and Encumbrances and (B) the Assumption and Assignment of Certain Executory Contracts, ¶ 34, entered 9/30/10 [D.I. 4054]; and (ix) 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 ("Patent Sale Order"), ¶ 39, entered 7/11/11 [D.I. 5935].

diligence materials in the electronic data rooms was limited to persons covered by confidentiality and non-disclosure agreements.<sup>15</sup>

23. At the conclusion of each sale, the sellers delivered to each purchaser at least some, and in some cases all, of the confidential commercial and other proprietary information contained in the respective electronic data room, along with any other sensitive documents and information otherwise required to be delivered under the respective transactional documents.<sup>16</sup>

24. Under the various purchase and sale agreements, Debtors have ongoing confidentiality obligations to the purchasers. For example, the Asset Sale Agreement with Genband restricted the sellers from disclosing any “competitively sensitive information and data related to the Business or the Assets (including Transferred Intellectual Property and competitively sensitive Business Information existing as of the Closing Date).”<sup>17</sup>

#### **D. Confidential Information Has Been Protected In The Allocation Litigation**

25. Over the last several years, Debtors, the Canadian Debtors, the Monitor, the EMEA Debtors, the Joint Administrators, the Committee, the Bondholder Group, and other key constituencies, including the so-called “UK Pension Parties” (collectively, the “Core Parties”) have engaged in comprehensive settlement discussions with respect to the allocation of the Sale Proceeds and the potential resolution of claims filed by the EMEA Debtors and the UK Pension Parties. These comprehensive settlement discussions included three formal rounds of mediation, none of which were successful.

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<sup>15</sup> Decl. of Timothy C. Ross in Support of Motion to Extend Automatic Stay, Sept. 18, 2014, ¶ 16 [D.I. 14477] (hereinafter, “Ross Decl.”).

<sup>16</sup> Ross Decl., ¶¶ 16.a., 16.d.

<sup>17</sup> See Patent Sale Order [D.I. 2632], Exhibit A (Asset Sale Agreement § 5.11); see also CDMA/LTE Sale Order [D.I. 1205], Exhibit A (Asset Sale Agreement § 5.11); and Enterprise Sale Order [D.I. 1514], Exhibit A (Amended and Restated Asset and Share Sale Agreement § 5.11).

26. After the third mediation ended in January, 2013 without a settlement, certain of the Core Parties sought relief from this Court and the Canadian Court to approve litigation procedures to govern the allocation disputes and the claims filed by the EMEA Debtors and the UK Pension Parties against Debtors and the Canadian Debtors. On April 3, 2013, the Court (a) granted Debtors' motion for approval of binding procedures and an expedited schedule for the cross-border resolution of the dispute concerning the allocation of the Sale Proceeds (the "Allocation Dispute"), (b) denied the Joint Administrators' cross-motion to compel arbitration, and (c) directed the Core Parties to continue negotiation of an allocation protocol.<sup>18</sup> Additionally, the Court scheduled joint hearings to determine the allocation of the Sale Proceeds (the "Allocation Trial" and, collectively with the Allocation Dispute and related proceedings, the "Allocation Litigation"), the claims of the EMEA Debtors, and the claims of the UK Pension Parties. The Canadian Court issued a parallel order and endorsement on March 8, 2013 and April 3, 2013 respectively.<sup>19</sup>

27. On June 11, 2013, the Court issued a protective order governing discovery in the Allocation Litigation.<sup>20</sup>

28. As a result of a complex process, each estate and the other parties to the Allocation Dispute and related proceedings produced approximately 3 million documents. The original source of each of these 3 million documents is not readily identifiable or easily obtainable at this time.<sup>21</sup>

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<sup>18</sup> D.I. 9946, 9947.

<sup>19</sup> See Notice of Filing of Items Designated for Record on Appeal, Exhibits C and D (May 1, 2013) [D.I. 10414].

<sup>20</sup> D.I. 10805-2.

<sup>21</sup> Ross Decl., ¶ 17.

29. On May 8, 2014, this Court and the Canadian Court (collectively, the “Courts”) held a joint hearing in advance of the Allocation Trial on motions regarding expert reports and confidentiality of documents. Several non-litigant parties appeared at the hearing, including counsel for Rockstar, Ericsson, and Microsoft (in its capacity as a party to a pre-petition license agreement), to voice their concerns about the need to protect confidential and proprietary documents and information.<sup>22</sup> For example, the lawyer representing both Ericsson and Rockstar stated:

[A]s the Court correctly observed, in combination [Rockstar] and Ericsson are responsible for five and three-quarter billion of the proceeds that are to be divided up in the allocation trial. That price is reflective of the value of the assets that we acquired, but it’s also reflective of the ancillary protections we acquired under our purchase agreements because we not only bought those patents and those assets and the technology, but we also bought a lot of other information that is vital to maintaining the value of those assets in the marketplace free from competitors and free from litigants as we go forward with those assets. So we have a vital interest in the outcome of this and in the outcome of the treatment of the confidentiality of documents. We have really two concerns. The first is substance, and that’s protecting what is really confidential and really valuable to our business. We’re mindful of the process that is about to unfold. We have no interest in being obstructionist or delaying it. We don’t envision that we’re actively participating in this in any fashion. We have no skin in this game other than protecting what we purchased.<sup>23</sup>

30. During that hearing, Debtors also expressed their desire to proceed carefully to “avoid exposing any of the estates to any potential liability or complaint by a purchaser or by a counter-party to a confidential document.”<sup>24</sup>

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<sup>22</sup> Several non-litigants, including Microsoft and Tellabs, also filed their own motions, or joinders in others’ motions, seeking protection of certain confidential and sensitive materials, as explained in detail in supporting declarations. *See, e.g.*, D.I. 13500 (Exhibit A (Declaration of Horacio E. Gutiérrez)), 13509, 13515, 13516, 13519, 13520 (Declaration of Donald Powers).

<sup>23</sup> Tr. of May 8, 2012 Hearing at 57: 4-24 [D.I. 13555].

<sup>24</sup> *Id.* at 62:15-18.

31. Following that hearing, the Court on May 12, 2014 entered an Order Providing Directions and Establishing Procedures for Sealing Trial Exhibits, Redacting Pretrial Submissions, and Protecting Confidential Information from Public Disclosure During the Trial.<sup>25</sup> The Court entered a supplementary order on May 30, 2014, which principally addressed confidentiality concerns of the Canadian Revenue Authority (the “CRA”).<sup>26</sup>

32. Also on May 12, 2014, the parties commenced the Allocation Trial before the Courts. The evidentiary portion of the Allocation Trial concluded on June 24, 2014. Post-trial briefs were submitted and closing arguments in the Allocation Trial concluded on September 24, 2014.

33. The parties have largely completed an extensive process of reviewing and redacting for confidentiality and privilege approximately 2,200 Allocation Trial exhibits and deposition designations.<sup>27</sup> The review process involves Debtors, the Canadian Debtors, the EMEA Debtors, the other Core Parties, certain purchasers of the Nortel assets, and other interested parties such as licensees and the CRA. At the conclusion of this review and redaction process, public versions of all 2200 Allocation Trial exhibits and deposition designations will be provided to the Courts.<sup>28</sup>

**E. The Pending Third-Party Discovery Requests To Debtors In Litigations Involving Former Nortel Patents Sold To Genband**

34. In January, 2014, Genband initiated a patent infringement suit against Metaswitch in the U.S. District Court for the Eastern District of Texas, styled *Genband US LLC v.*

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<sup>25</sup> D.I. 13554.

<sup>26</sup> D.I. 13729.

<sup>27</sup> Ross Decl., ¶ 17.

<sup>28</sup> *See generally* Stipulation Regarding Exhibits and Other Documents Used at the Allocation Trial [D.I. 15345-1]; Order Approving Trial Exhibits Stipulation [D.I. 15348].

*Metaswitch Networks LTD, et al.*, No. 2:14-cv-33-JRG (E.D. Tex.) (the “*Genband v. Metaswitch* Litigation”). Five of the 8 patents being asserted against Metaswitch were originally issued to Nortel Networks Limited and were acquired by Genband in the 2001 asset sale transaction. Fact discovery is set to close on May 6, 2015.<sup>29</sup>

35. In July, 2014, Metaswitch filed a counter-suit against Genband in the Eastern District of Texas, styled *Metaswitch Networks LTD v. Genband US LLC*, No. 2:14-cv-744-JRG (E.D. Tex.) (the “*Metaswitch v. Genband* Litigation”), alleging infringement of certain Metaswitch patents by Genband. Fact discovery is set to close on August 10, 2015.<sup>30</sup>

36. On February 10, 2015, counsel for Metaswitch contacted counsel for Debtors regarding Metaswitch’s desire to serve third-party discovery requests on Debtors in connection with the two pending litigations between Metaswitch and Genband. Since that time, the parties have worked cooperatively to reach an agreement regarding a discovery protocol substantially along the lines of the Second Discovery Protocol adopted by this Court for third-party discovery in litigations involving the patents that Nortel sold to Rockstar.<sup>31</sup>

37. On March 4, 2015, with Debtors’ consent, Metaswitch served two substantially identical subpoenas on Debtors seeking production of specified documents in connection with each of the pending Metaswitch/Genband litigations.<sup>32</sup>

38. Each of the Metaswitch subpoenas contains 53 separate document requests and seeks a broad range of documents relating not only to the particular patents that Genband is

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<sup>29</sup> Declaration of Mark M. Supko in Support of Debtors’ Motion for Entry of Third Discovery Protocol Implementing the Court’s Previous Orders Extending Automatic Stay and Regulating Third-Party Discovery, April 6, 2015, ¶¶ 7-8 (attached as Exhibit B hereto) (hereinafter, “Supko Decl.”).

<sup>30</sup> See Supko Decl., ¶ 7.

<sup>31</sup> Supko Decl., ¶ 10.

<sup>32</sup> Supko Decl., ¶ 9 and Tabs 1-2.

asserting against Metaswitch, but also technical and financial documents more broadly relating to Nortel's former businesses, including but not limited to documents relating to the business sold to Genband.<sup>33</sup>

39. In view of the scope and nature of the third-party discovery that Metaswitch is seeking from Debtors, counsel for Debtors informed counsel for Metaswitch that Debtors intended to move this Court to enter a Third Discovery Protocol that essentially extends the procedures and protections embodied in the Second Discovery Protocol to third-party discovery in litigations involving former Nortel patents other than those sold to Rockstar.<sup>34</sup>

40. Nevertheless, mindful of the May 6, 2015 fact discovery deadline in the *Genband v. Metaswitch* Litigation, Debtors have agreed to begin the process of responding to Metaswitch's discovery requests pursuant to mutually agreed procedures, as reflected in an Agreement Between Metaswitch and Nortel Networks Inc. (the "Nortel-Metaswitch Discovery Agreement").<sup>35</sup>

41. The Nortel-Metaswitch Discovery Agreement is modeled on the currently proposed Third Discovery Protocol, which is in turn modeled on the Second Discovery Protocol. In particular, the Nortel-Metaswitch Discovery Agreement establishes procedures for running keyword searches against specified document repositories, providing hit counts for those searches, running the searches to identify potentially responsive documents, and electronically filtering out potentially privileged documents. The Nortel-Metaswitch Discovery Agreement also contemplates that the parties will meet and confer regarding allocation of the costs for these discovery efforts between or among Debtors, Metaswitch, Genband, and/or third parties. The

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<sup>33</sup> Supko Decl., Tabs 1-2.

<sup>34</sup> Supko Decl., ¶ 11.

<sup>35</sup> Supko Decl., ¶ 10 and Tab 3.

primary distinction between the Nortel-Metaswitch Discovery Agreement and the proposed Third Discovery Protocol is that the former does not contain any provisions to protect Debtors from potential liability arising from the production of documents that may contain third-party confidential information (as this Court provided in the Second Discovery Protocol).<sup>36</sup> This is largely why Debtors are seeking entry of the Third Discovery Protocol.

**F. Debtors Still Face Substantial Challenges In Responding To Third-Party Discovery**

42. In connection with the Insolvency Proceedings, Debtors have divested all of their various business operations. Debtors' limited present operations exist only to facilitate resolution of the Insolvency Proceedings.<sup>37</sup>

43. Debtors have only one remaining facility, located in North Carolina, and no remaining employees. Ongoing administrative operations are being handled by a handful of former employees working on a contract basis, including declarant Timothy C. Ross, as well as by U.S. principal officer John Ray.<sup>38</sup> These individuals did not hold technical or legal positions that related in any relevant way to the subject matter of the patent infringement suits in connection with which Debtors have been subpoenaed and for which Debtors are seeking the proposed Third Discovery Protocol.<sup>39</sup>

44. In part due to standard disaster recovery procedures in place when Debtors were actively operating its businesses and in part due to litigation-related holds, including in the context of the ongoing Insolvency Proceedings, Debtors have retained vast stores of paper and

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<sup>36</sup> Supko Decl., ¶ 11 and Tab 3.

<sup>37</sup> Ross Decl., ¶ 8.

<sup>38</sup> There were 7 former employees supporting Debtors' administrative operations at the time of the Ross Declaration.

<sup>39</sup> Ross Decl., ¶ 9.



electronic records. Due to the nature of how those records have been maintained, however, it is extremely difficult to determine whether any particular category of documents exists or where such documents may be located.<sup>40</sup>

45. Debtors have control over more than a decade's worth of digital media archives, comprising more than 142,000 physical items (mostly magnetic tapes), that are presently maintained by Iron Mountain at approximately six different locations around the country. Iron Mountain maintains only a high-level online catalog of these digital media archives. In at least some cases, it may be possible with a substantial degree of effort to trace portions of the archives back to the particular Nortel affiliate that provided them to Iron Mountain, but that would only enable identification of the system or server to which a backup tape corresponds. In order to view the contents of any given tape, it would be necessary to load the tape onto whichever system/server it came from, if it still exists, and use the corresponding computer application to review the contents, if the magnetic tape is still readable.<sup>41</sup>

46. Iron Mountain is also holding more than 171,000 boxes of Debtors' documents and other physical items (*e.g.*, laptops, computer hard drives, books, etc.) at more than fifteen warehouses across the country. Some of this material comprises records put in off-site storage for safekeeping in the ordinary course of Debtors' business operations, but much of it also was sent to Iron Mountain as Debtors were shutting down their operations in the course of the Insolvency Proceedings. As with the digital media archives discussed above, Iron Mountain maintains only a high-level online catalog for these physical items. Again, in at least some cases, it may be possible with a substantial degree of effort to trace a particular collection of

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<sup>40</sup> Ross Decl., ¶ 10.

<sup>41</sup> Ross Decl., ¶ 11.

boxes back to the particular Nortel affiliate that provided them to a particular Iron Mountain facility, but in order to determine the contents of any individual box it would be necessary to retrieve the box from Iron Mountain and physically inspect the contents.<sup>42</sup>

47. Any effort to locate particular documents, or even broad categories of documents, within the physical and electronic stores under Debtors' control is made all the more complicated by the fact that the remaining personnel have little or no personal knowledge of the relevant business and/or legal operations of the company. Accordingly, even a seemingly simple request such as "find all of John Smith's documents" requires a laborious effort that begins with searching human resource records to determine who "John Smith" was, which affiliate he worked for and in which facility, scouring any accessible paper and/or computer records for that affiliate to try to determine whether and where it may have archived its documents, calling back from Iron Mountain potentially thousands of boxes of documents associated with that affiliate, and then physically inspecting each box to determine whether any of them contain "John Smith's" documents. To say that this is like looking for the proverbial needle in a haystack would be to dramatically understate the difficulty of the task.<sup>43</sup>

48. In addition to the above-described archives, Debtors have kept a small number of their computer systems operational in order to assist with the administrative aspects of the wind-down. These include a human resources/personnel system, certain financial systems, and the "LiveLink" document management system.<sup>44</sup>

49. The LiveLink system was available to the various Nortel affiliates to use, on a largely voluntary basis, as a document repository that could be accessed by the members of the

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<sup>42</sup> Ross Decl., ¶ 12.

<sup>43</sup> Ross Decl., ¶ 13.

<sup>44</sup> Ross Decl., ¶ 14.

organization regardless of where they were physically working. However, there was no standard method by which documents and information were posted to or organized on LiveLink. Furthermore, at one time, there was a physical instance of the LiveLink system residing on each of several Nortel servers located around the world, and these various instances were logically connected so that users could access documents seamlessly regardless of where the documents were physically stored. Today, however, as a result of the divestitures, Debtors have possession of, and access to, only the U.S.-based instance of the LiveLink system.<sup>45</sup>

50. The LiveLink system to which Debtors have access has not been actively maintained for more than three years, but it does provide some rudimentary searching capabilities. The system supports a relatively crude (by today's standards) Boolean search syntax that enables AND/OR/NOT type searches on specified text strings (*e.g.*, "patent AND infring\* AND NOT trademark"), but it does not support proximity searches (*e.g.*, "patent w/5 infring\*"). Consequently, it is often not possible to structure a search in a way that returns a manageable number of potentially relevant "hits."<sup>46</sup>

51. When a search is run in the LiveLink system, the hits can be viewed online in various formats, including in a preview mode that will highlight search terms in the document. However, the system does not include any facility for efficiently downloading documents returned in a search. Rather, it is necessary to open each individual document desired to be downloaded and save that document to a storage location (*e.g.*, a Windows folder resident on the computer on which the search was run or a portable drive). This is an extremely tedious and

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<sup>45</sup> Ross Decl., ¶ 14.a.

<sup>46</sup> Ross Decl., ¶ 14.b.

time-consuming task if any substantial number of documents needs to be downloaded, as it typically takes at least 15-20 seconds to access and download each individual document.<sup>47</sup>

52. The documents maintained in LiveLink include some basic metadata fields, including the date a document was created and the name of the individual who first stored the document in the system. The metadata does not identify the business unit with which that individual was associated, nor does it associate the document with any particular Nortel entity. Accordingly, in order to determine whether any particular document “belongs to” Debtors or one of the other Nortel estates (*i.e.*, for purposes of assessing Debtors’ confidentiality obligations and/or who owns any privilege), it would be necessary to trace the individual who stored the document in LiveLink back to the Nortel entity by whom he or she was employed using the available human resources records.<sup>48</sup>

**G. Some Of The Documents Sought By The Pending Subpoenas Were Previously Searched For, Collected, And Transferred To Others**

53. The third-party subpoenas that Metaswitch has served on Debtors seek, among other things, valuation-related documents including (a) documents relating to efforts to assess the potential value of certain patents and businesses prior to putting those assets up for sale, and (b) documents relating to the sale itself, including documents submitted by bidders.<sup>49</sup> As discussed further below, the vast majority of such valuation-related documents were collected for purposes of the Allocation Litigation among the various Nortel estates.<sup>50</sup>

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<sup>47</sup> Ross Decl., ¶ 14.c.

<sup>48</sup> Ross Decl., ¶ 14.d.

<sup>49</sup> Supko Decl., Tab 3.

<sup>50</sup> Ross Decl., ¶ 15.

54. In connection with the various asset sales made during the Chapter 11 Cases, Nortel affiliates, including Debtors, transferred to the purchasers a large percentage of the paper and electronic documents relating to their former business operations.<sup>51</sup>

55. Nortel sold various business lines and related assets to separate purchasers, including Avaya, Ciena, Ericsson, Genband, Hitachi, Kapsch, Radware, and Rockstar. The asset transfer agreements for these business line sales included provisions for transferring to the purchasers Nortel's paper and electronic documents relating to the transferred business lines.<sup>52</sup>

#### **H. Some Of The Subpoenaed Documents Still In Debtors' Possession Likely Are Privileged And/Or Confidential**

56. The third-party subpoenas served by Metaswitch also seek patent-related documents including documents relating not only to the particular patents being asserted against Metaswitch by Genband, but also documents relating to all other patents that Nortel transferred to Genband.<sup>53</sup>

57. To the extent Debtors still have such patent-related documents in their possession, custody, or control, most or all such documents likely are subject to confidentiality obligations and/or claims of attorney-client privilege and work product immunity, rendering any effort to review such documents for possible production in response to discovery requests extremely burdensome.<sup>54</sup> A possible result of Debtors undertaking that burden may not be the production of a large number of documents, but rather the production of a small number of documents and a very extensive privilege log.

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<sup>51</sup> Ross Decl., ¶ 16.

<sup>52</sup> Ross Decl., ¶ 16.d.

<sup>53</sup> Supko Decl., Tab 3.

<sup>54</sup> See Ross Decl., ¶ 18.

58. In addition, the asset sale agreement between Nortel and Genband includes confidentiality restrictions that obligate Debtors to take reasonably appropriate steps to preserve the confidential status of documents related to the assets that were sold.<sup>55</sup>

59. Debtors also have confidentiality and privilege obligations with respect to each of the other Nortel estates and the other Core Parties as a result of the Allocation Litigation and the protective and confidentiality orders entered therein.<sup>56</sup>

60. In view of these various obligations, it would be extremely burdensome, time-consuming, and costly for Debtors to individually review, designate, and produce documents sought by the Metaswitch subpoenas or similar future subpoenas. Such a review would include a review for both attorney-client privileged information and confidential information. If protected information relevant to one or more of the business line sales were identified, such parties may be given notice and an opportunity to object before any such documents are disclosed to others. In addition, the information in the requested valuation documents that were collected for the Allocation Litigation are subject to protective orders issued by this Court and, therefore, Debtors would have to consult extensively with the other Nortel estates and Core Parties to ensure that any production it makes complies with the requirements of those protective orders.<sup>57</sup>

61. Moreover, the documents sought include highly technical business information, and neither outside counsel nor contractors hired to assist with any document review may be able to identify readily which buyers or other third parties have an interest therein.<sup>58</sup> Debtors should not be put in a position where they could subject themselves to liability to third parties by being

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<sup>55</sup> See Ross Decl., ¶ 18.a.

<sup>56</sup> Ross Decl., ¶ 18.b.

<sup>57</sup> Ross Decl., ¶ 19.

<sup>58</sup> Ross Decl., ¶ 19.

forced to comply with complex subpoenas without the benefit of employees who are knowledgeable about the substance of the information sought.<sup>59</sup> And of course, the issues could be magnified if Debtors are served with additional third-party subpoenas related to the business line sales.

### **RELIEF REQUESTED**

62. By this Motion, Debtors seek entry of an order, pursuant to Sections 105(a), 107(b), 362(a), and 541 of the Bankruptcy Code and Bankruptcy Rule 9018, adopting the proposed Third Discovery Protocol to govern third-party discovery against Debtors in any litigation involving patents formerly owned by Debtors and/or other Nortel entities other than the patents sold to Rockstar (third-party discovery as to which is already governed by the previously ordered Second Discovery Protocol [D.I. 14906-1]).

### **BASIS FOR RELIEF**

#### **A. This Court Has Jurisdiction To Grant The Requested Relief**

63. From a jurisdictional standpoint, the relief requested in the present Motion is no different than the relief sought in Debtors' prior Motion to Extend the Automatic Stay, as the Court's authority does not turn on whether the underlying litigation for a third-party subpoena involves patents that Nortel sold to Rockstar or to one of the other purchasers of Nortel's assets (D.I. 14535). As to that prior motion, this Court correctly concluded that it "has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 105(a), 107(b), 362(a), and 541, and Bankruptcy Rule 9018." Order Extending Automatic Stay at 2 (D.I. 14746). The same rationale applies here.

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<sup>59</sup> Ross Decl., ¶ 19.

64. This Court, through automatic reference by the District Court, has “exclusive jurisdiction of all of the property, wherever located, of [NNI] as of the commencement of [the] case, and of property of the estate. . . .”<sup>60</sup>

65. The Bankruptcy Code broadly defines “property of the estate” to include all legal or equitable interests of Debtors in property as of the commencement of the case, all proceeds, product, or offspring of or from property of the estate, and any interest in property that the bankruptcy estate acquires after the commencement of the case, wherever located and by whomever held.<sup>61</sup> As explained below, Debtors’ books and records fall within the definition of “property of the estate.”

66. In addition to its exclusive jurisdiction over Debtors’ documents, this Court has jurisdiction and inherent authority to enforce its own orders, particularly orders entered in “core proceedings” such as orders approving sales and orders entered in the Allocation Litigation and other matters concerning the administration of the estate.<sup>62</sup>

**B. The Court Should Enforce And/Or Extend The Automatic Stay To Protect Debtors’ Property, Including Documents In Debtors’ Possession Or Control**

67. Section 362 of the Bankruptcy Code automatically and immediately stays all actions against a debtor and its property. As one of the fundamental debtor protections provided by bankruptcy law, the scope of the automatic stay is broad.<sup>63</sup>

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<sup>60</sup> 28 U.S.C. § 1334(e)(1). This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1334(b) (the court has original jurisdiction over “all civil proceedings arising under title 11, or arising in or related to cases under title 11”).

<sup>61</sup> 11 U.S.C. § 541(a).

<sup>62</sup> See, e.g., *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (holding that “the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders”).

<sup>63</sup> *Midatlantic Nat’l Bank v. N.J. Dept. of Env’tl. Prot.*, 474 U.S. 494, 504 (1986) (acknowledging the broad scope of the automatic stay under the 1978 Bankruptcy Code).



68. Specifically, Section 362(a)(3) stays “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.”<sup>64</sup> Mere possession or control of documents by Debtors is sufficient to invoke the protection of the automatic stay.<sup>65</sup>

69. Debtors’ books and records are “property of the estate” and are protected by Section 362(a)(3).<sup>66</sup>

70. Because “property of the estate” includes Debtors’ documents “wherever located and by whomever held,”<sup>67</sup> the automatic stay of Section 362(a)(3) extends to any of Debtors’ documents that may still be in the possession of Genband or Debtors’ professionals and former employees. Thus, any third-party subpoenas not expressly authorized under the First and Second Discovery Protocols and related orders would violate the automatic stay.<sup>68</sup>

71. In connection with the first-day motions, the Court entered an Order Enforcing Section 362 of the Bankruptcy Code [D.I. 52]. The Court also enforced the automatic stay with respect to certain UK pension proceedings [D.I. 2576], and with respect to third-party discovery in litigations involving patents sold to Rockstar [D.I. 14746]. Debtors respectfully submit that a further order is warranted here, to ensure that the protections afforded by the automatic stay are

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<sup>64</sup> 11 U.S.C. § 362(a)(3).

<sup>65</sup> See, e.g., *In re Zartun*, 30 B.R. 543, 545 (B.A.P. 9th Cir. 1983) (citing legislative history in support of a ruling that Section 362(a)(3) protects “property over which the estate has control or possession”).

<sup>66</sup> See, e.g., *In re Integrated Res., Inc.*, No. 91 CIV. 1310 (MJL), 1992 WL 8335, at \*1-2 (S.D.N.Y. Jan. 14, 1992) (affirming a bankruptcy court’s decision that a debtor’s books and records are property of the estate and denying a motion for relief from the automatic stay); *In re Greenlife, Inc.*, No. 88-00825-RS, 1990 WL 10091748, at \*3 (Bankr. E.D. Va. July 16, 1990) (acknowledging that a debtor’s books and records are protected by the automatic stay and stating that “the party seeking issuance or enforcement of a subpoena would be precluded from taking further action in the absence of relief from the stay”).

<sup>67</sup> 11 U.S.C. § 541(a).

<sup>68</sup> See *Raymark Indus. Inc. v. Lai*, 973 F.2d 1125, 1131 (3d Cir. 1992), and *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1206 (3d Cir. 1991) (both holding that actions taken in violation of the stay are void *ab initio*).

applied to the current subpoenas as well as any similar future subpoenas not related to the patent portfolio sold to Rockstar.

**C. The Court Should Enforce Its Prior Orders, Including The Sale Orders And The Confidentiality Orders For The Allocation Litigation**

72. This Court has jurisdiction to enforce its own orders.<sup>69</sup>

73. This Court has entered several relevant orders in “core proceedings” in these Chapter 11 Cases that should be enforced as to the pending subpoenas and any similar future subpoenas not related to the patent portfolio sold to Rockstar. For example, in the Sale Orders, the Court approved the various sale transaction documents and authorized Debtors to enter into, perform, and comply with their covenants and undertakings in the transaction documents, which include ongoing confidentiality obligations.<sup>70</sup> The order requested by this Motion is in furtherance of the Sale Orders and the Court-approved, ongoing confidentiality obligations of Debtors.

74. In addition, the Court has entered orders in connection with the Allocation Litigation that protect confidential, privileged, and other sensitive documents and information from public disclosure.<sup>71</sup> The Court’s orders balance the need for a public trial with the acute

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<sup>69</sup> See, e.g., *In re FormTech Indus., LLC*, 439 B.R. 352, 358 (Bankr. D. Del. 2010) (interpretation and enforcement of a sale order is a core proceeding); *In re CD Liquidation Co., LLC*, No. 09-13038(KG), 2012 Bankr. LEXIS 5924 (Bankr. D. Del. Dec. 28, 2012) (Gross, J.) (upholding and enforcing provisions of a settlement order and a confirmation order).

<sup>70</sup> See, e.g., CDMA/LTE Sale Order [D.I. 1205], ¶¶ 3, 47; Enterprise Sale Order [D.I. 1514], ¶ 3; CVAS Sale Order [D.I. 2632], ¶ 3; Patent Sale Order [D.I. 5935], ¶ 3.

<sup>71</sup> See, e.g., Order Entering a Protective Order [D.I. 10805-2], ¶¶ 1(b), 7 (governing the handling of all discovery material in the Allocation Litigation and prohibiting confidential material from being made public); Order Providing Directions and Establishing Procedures for Sealing Trial Exhibits, Redacting Pretrial Submissions, and Protecting Confidential Information from Public Disclosure During the Trial [D.I. 13554], ¶¶ 5, 7 (establishing review procedures for the Core Parties to redact, remove, or otherwise protect from public disclosure Allocation Trial documents); Supplementary Order Providing Directions and Establishing Procedures for Sealing Trial Exhibits, Redacting Pretrial Submissions, and Protecting Confidential Information from Public Disclosure During the Trial [D.I. 13729], ¶¶ 3, 6 (sealing certain documents and prohibiting the use of other information or testimony adduced at the Allocation Trial).

sensitivities relating to third-party proprietary and other interests. With this Motion, Debtors seek to maintain the integrity of, and respect for, the Court's prior orders.<sup>72</sup>

75. The Court also has entered other relevant orders, including (i) an order enforcing Section 362 of the Bankruptcy Code by declaring that Debtors are afforded the protections of the automatic stay, (ii) an order approving a cross-border protocol designed to promote respect for comity among the Courts, which recognized the validity of the stay in the Canadian Proceedings, and (c) the Order Enforcing Automatic Stay in connection with the patent portfolio sold to Rockstar as well as the Second Discovery Protocol.<sup>73</sup> An order enforcing and/or extending the automatic stay would be in furtherance of those orders and the various cross-border stays that are in effect.

76. In each of these orders, this Court retained jurisdiction of matters relating to the implementation and/or enforcement of its orders.

77. Given the extensive history and extraordinary complexity of the Nortel Insolvency Proceedings and the extent to which the Court previously granted relief and worked in cooperation with the Canadian Court to protect various privilege and confidentiality interests, it would be appropriate for the Court to grant the further relief sought by this Motion.

**D. The Court Should Enter Related Relief Under Section 105(a) Of The Bankruptcy Code**

78. Section 105(a) of the Bankruptcy Code gives the Court the power to "issue any

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<sup>72</sup> In similar circumstances, the Second Circuit has affirmed lower court decisions that kept in place protective orders that sealed documents in connection with a post-bankruptcy license transaction. *See Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27-28 (2d Cir. 1994) (affirming the denial of a motion to unseal confidential commercial information).

<sup>73</sup> *See* Order Enforcing Section 362 of the Bankruptcy Code [D.I. 52], ¶ 2; Order Approving Stipulation of the Debtors and the Official Committee of Unsecured Creditors of Nortel Networks Inc. *et al.*, Amending the Cross-Border Court-to-Court Protocol [D.I. 990], ¶¶ 6, 17; Order Extending Automatic Stay and Regulating Third-Party Discovery [D.I. 14746]; Order Approving Second Discovery Protocol in Connection with Order Extending Automatic Stay and Regulating Third Party Discovery [D.I. 14906].

order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”<sup>74</sup>

79. This Court has already found that it was appropriate to enforce and extend the automatic stay pursuant to Section 105(a) to protect Debtors against third-party discovery requests in connection with litigations involving former Nortel patents that were sold to Rockstar.<sup>75</sup> In doing so, the Court noted that “[e]xposing Debtors and affiliated persons and entities to multiple discovery requests in actions pending in multiple jurisdictions without a discovery plan and the Court’s supervision will expose Debtors and their estates to time and expense which will reduce estate assets.”<sup>76</sup>

80. In *Residential Capital*, the Bankruptcy Court for the Southern District of New York used its power under Section 105 to extend the automatic stay to protect a debtor from burdensome third-party discovery.<sup>77</sup> Importantly, that court determined that the relief sought did not require the filing of an adversary proceeding because extension of the stay to protect the debtors related to the administration of the bankruptcy case itself.<sup>78</sup>

81. *Residential Capital* offers a persuasive model for these Chapter 11 Cases and one that is respectful of the district courts in which the third-party litigations are pending and those in which the third-party subpoenas may be enforced. In *Residential Capital*, the court as a matter of Chapter 11 case management stayed all discovery from the debtor, but did not prohibit third parties from moving to lift the stay. The court based its ruling on the principles of Rules 26 and

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<sup>74</sup> 11 U.S.C. § 105(a).

<sup>75</sup> Order Extending Automatic Stay [D.I. 14746], ¶ 2.

<sup>76</sup> *Id.* at ¶ 1.

<sup>77</sup> *See In re Residential Capital*, 480 B.R. 529, 550 (S.D.N.Y. Bankr. 2012).

<sup>78</sup> *Id.* at 539.

45 of the Federal Rules of Civil Procedure and the required balancing of burdens and benefits.<sup>79</sup> The court identified six factors relevant to whether the stay should be modified upon future request to permit third-party discovery: (1) scope, (2) context, (3) need, (4) burden, (5) expense, and (6) timing.<sup>80</sup>

82. During the November 7, 2014 hearing on Debtors' motion with respect to the then-pending third-party discovery requests in Rockstar-related litigations, this Court concluded that although the facts differed in some respects, the rationale of *Residential Capital* supported extending the automatic stay to those third-party discovery requests.<sup>81</sup>

83. The Court explained that "potential liability [arising from disclosing the requested documents] is of foremost concern to the Court," and also cited the number of current and future subpoenas with which Debtors might be faced as justifying "the protection of this Court."<sup>82</sup> Substantially the same justifications now support extending the protections embodied in the Second Discovery Protocol to third-party discovery requests in litigations involving patents that were transferred to other purchasers of Nortel's businesses and related assets.

84. An order under Section 105(a) also would be appropriate to confirm that the automatic stay of Section 362(a)(3) protects Debtors' documents that may be in the possession, custody, or control of third parties, such as estate professionals and former employees.

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<sup>79</sup> *Id.* at 542-43.

<sup>80</sup> *Id.* at 544-50.

<sup>81</sup> Tr. of Proceedings, Nov. 7, 2014 [D.I. 14761], pg. 135.

<sup>82</sup> *Id.*

85. Section 541 of the Bankruptcy Code provides that property of the estate includes Debtors' interests in property "wherever located and by whomever held. . . ."<sup>83</sup> Thus, Debtors' interests in the documents and information in the possession of former employees and professionals are property of the estate. Even if the documents themselves fall outside the broad definition of property of the estate, Debtors' confidentiality and privilege rights – and the confidentiality and privacy rights and interests of third parties – in those documents must be protected.

86. Principles of comity also justify entry of a Section 105 order.<sup>84</sup> In addition to recognizing the Canadian and EMEA Proceedings, this Court has approved cross-border protocols and worked in concert with the Canadian Court in hearing the Allocation Trial. The Court also has extended comity by denying attempts by parties to obtain relief from the Initial Order of the Canadian Court to serve a document preservation subpoena on the Canadian Debtors.<sup>85</sup>

87. Some of the documents now in Debtors' possession or control may have been authored or created by current and/or former employees of the Canadian and/or EMEA Debtors. In some instances, they were produced to Debtors only for purposes of the Allocation Litigation. Third parties should not be able to obtain from Debtors that which they may not obtain directly

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<sup>83</sup> 11 U.S.C. § 541(a). *Cf.* 11 U.S.C. § 542(e) (the court may order third parties that hold recorded information relating to the debtor's property or financial affairs to turn over the information to the debtors).

<sup>84</sup> *Cf. Stonington Partners, Inc. v. Lernout & Hauspie Speech Products N.V.*, 310 F.3d 118, 126 (3d Cir. 2002) ("The principles of comity are particularly appropriately applied in the bankruptcy context because of the challenges posed by transnational insolvencies and because Congress specifically listed 'comity' as an element to be considered in the context of such insolvencies"); 11 U.S.C. § 1507(b) (listing "principles of comity" as a consideration for whether to provide additional assistance under Chapter 15).

<sup>85</sup> *See* Order [09-10164, D.I. 265] (denying motion to intervene and to modify stay pursuant to Section 1522(c)); Order Denying Lead Plaintiffs' Renewed Motion for Limited Modification of the Recognition Order to Pursue the Securities Litigation Under 11 U.S.C. § 1522(c) [09-10164, D.I. 585].

from the Canadian or EMEA Debtors. In addition, the Canadian and EMEA Debtors should have an opportunity to be heard in this Court to the extent they have an interest in any production by or other discovery sought from Debtors.

88. Finally, relief from this Court would help protect Debtors from the risk of being subjected to inconsistent rulings. Metaswitch and/or future requesting parties could seek to enforce subpoenas in district courts. There is a potential for inconsistent rulings from those courts regarding the application and scope of the automatic stay and the document production efforts that Debtors may be required to make. The potential for inconsistent adjudications is manifest.

89. It is consistent with the bankruptcy policy of centralizing litigation against a debtor to have this Court exercise control over all of Debtors' documents and all third-party requests to obtain copies of them; in addition, no other court has the ability or responsibility to take account of the impact such subpoenas may have on Debtors' estates and creditors.

### **NOTICE**

90. Notice of this amended Motion has been given via electronic transmission, first-class mail, hand delivery, or overnight mail to: (i) the Core Parties; (ii) the U.S. Trustee; (iii) all creditors and interest holders who have filed claims or have scheduled claims against Debtors that have not been disallowed;<sup>86</sup> (iv) the nine purchasers of Nortel assets and any other "Responding Parties" as defined in the confidentiality orders entered in connection with the Allocation Trial, including Genband, Rockstar, and Rockstar's apparent successor-in-interest to Nortel's former patent portfolio, RPX; (v) the other parties in the litigations with Genband, including Metaswitch; (vi) Spherix Inc., who is currently asserting former Nortel patents that it

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<sup>86</sup> Such creditors and interest holders will receive service of a notice of the filing of this Motion in lieu of receiving copies of the Motion.

acquired from Rockstar prior to Rockstar's sale of patents to RPX; (vii) the other parties in the litigations in which Spherix is asserting former Nortel patents, including VTech and Cisco, both of whom are seeking third-party discovery from Debtors, and (viii) the general service list established in these Chapter 11 cases. Accordingly, Debtors submit that under the circumstances no other or further notice is necessary.

**NO PRIOR REQUEST**

91. No prior request for the relief sought herein has been made to this or any other court.

**LOCAL RULE 7026-1(c) CERTIFICATION OF  
ATTEMPTS TO RESOLVE DISCOVERY DISPUTE**

92. The undersigned counsel for Debtors certifies that they and/or their co-counsel conferred, unsuccessfully, with counsel for Metaswitch in an attempt to resolve all of the issues concerning the third-party subpoenas described in this Motion. Metaswitch does not necessarily oppose the relief requested herein and reflected in the proposed Third Discovery Protocol, but certain aspects of that relief (*e.g.*, protection of Debtors from potential liability to third parties as a result of disclosing documents) are beyond the parties' ability to accomplish through agreement.

WHEREFORE, Debtors respectfully request that this Court (i) grant this Motion and the relief requested herein; (ii) enter the proposed order attached as Exhibit A hereto, adopting the Third Discovery Protocol; and (iii) grant such other and further relief as the Court deems just and proper.



Respectfully submitted,

Dated: April 8, 2015

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*Counsel for Debtors and Debtors in Possession*

## **Exhibit A**

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

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	:	Chapter 11
<i>In re</i>	:	
	:	Case No. 09-10138(KG)
Nortel Networks Inc., <i>et al.</i> , <sup>1</sup>	:	Jointly Administered
	:	
Debtors.	:	Re: D.I. _____
	:	
-----	x	

**[PROPOSED] ORDER ENTERING THIRD DISCOVERY PROTOCOL**

WHEREAS,

A. Nortel Networks, Inc. (“NNI”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), have moved (the “Motion”) for entry of an order, as more fully described in the Motion, (1) enforcing and/or extending the automatic stay pursuant to Section 362(a) of the Bankruptcy Code to third-party discovery of Debtors in connection with patent litigations involving former Nortel patents not already covered by the Second Discovery Protocol entered by the Court on December 8, 2014 [D.I. 14906], (2) enforcing the Court’s previous Order Extending Automatic Stay and Regulating Third-Party Discovery [D.I. 14746] in the context of such third-party discovery, and (3) granting related relief under Section 105(a) of the Bankruptcy Code.

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<sup>1</sup> 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). Contact information for the U.S. Debtors and their petitions are available at <http://dm.epiq11.com/nortel>.

B. The Court conducted a hearing on the Motion and considered the supporting Declaration of Timothy C. Ross [D.I. 14477] and Declaration of Mark M. Supko (filed herewith), and the record in these proceedings, including docket items in Case Nos. 09-10138, 09-10164, and 09-11972, as well as all papers filed in support of and in opposition to the Motion.

C. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 105(a), 107(b), 362(a) and 541, and Bankruptcy Rule 9018.

D. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

E. The Court has determined that the legal and factual bases set forth in the Motion establish just cause for the relief requested therein, and that such relief is in the best interests of the Debtors, their estates, their creditors, and the parties in interest.

F. Adequate notice under the circumstances was provided to all parties with an interest in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Third Discovery Protocol, attached hereto as “**Tab 1**”, is hereby approved and ordered by the Court.

2. The Court retains jurisdiction with respect to all matters and disputes arising out of or relating to this Order and the Third Discovery Protocol, including, but not limited to, the interpretation, implementation, and enforcement of this Order and the Third Discovery Protocol, and to provide any further relief that is necessary or appropriate in furtherance of this Order and the Third Discovery Protocol.

Dated: May \_\_\_\_, 2015

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THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

# **Tab 1**

**Tab 1**

**THIRD DISCOVERY PROTOCOL**

This Third Discovery Protocol supplements the First Discovery Protocol ordered by this Court on November 10, 2014 (D.I. 14746-1) and the Second Discovery Protocol ordered by this Court on December 8, 2014 (D.I. 14906-1).

All third-party discovery of Debtors in connection with litigations involving any patent previously owned by Debtors (or any other Nortel entity) other than the patents sold to Rockstar Bidco, LP through the Asset Sale Agreement dated June 30, 2011 (“Other Former Nortel Patents”) will proceed as follows, absent either (i) agreement among Debtors, any party seeking such discovery (a “Requesting Party”), and any party objecting to such discovery, or (ii) further Order of this Court:<sup>1</sup>

**Meet-and-Confer Requirement/Discovery Mediator**

1. Absent agreement, Debtors shall not be required to respond to any subpoena or other form of discovery request unless and until the Requesting Party has (i) met and conferred with counsel for Debtors in a good-faith effort to reach agreement on the scope and timing of Debtors’ discovery obligations, and (ii) if no agreement is reached, sought and obtained leave of this Court to serve such subpoena or other form of discovery on Debtors.

2. Karen Keller of Shaw Keller LLP shall serve as Discovery Mediator, in accordance with the terms of the Retainer Agreement submitted to the Court on January 22, 2015

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<sup>1</sup> For the avoidance of doubt, third-party discovery in litigations involving the patents sold to Rockstar Bidco, LP through the Asset Sale Agreement dated June 30, 2011 (“Former Nortel Patents”) shall continue to be governed by the Second Discovery Protocol.

(D.I. 10852-1). The Requesting Party shall sign onto the Retainer Agreement before being entitled to receive any discovery pursuant to this Third Discovery Protocol.

Cleared Allocation Trial Documents

3. If requested by the Requesting Party, Debtors shall produce the collection of approximately 1,850 trial exhibits, the full deposition transcripts for six specified individuals,<sup>2</sup> and two bid evaluation documents (collectively, the “Cleared Allocation Trial Documents”) that were reviewed and approved for production in accordance with this Court’s previous Protective Orders and Orders governing trial materials from the Allocation Litigation among the Nortel estates (including, without limitation, D.I. 10805, 13554, 13729).

a. The Cleared Allocation Trial Documents shall be treated by the Receiving Party as “Outside Counsel’s Eyes Only,” and all such documents shall further be given the highest level of protection under any Protective Order entered by the court in the litigation for which discovery is sought (the “Underlying Litigation”) until such time, if any, as those documents become part of the public trial record.

b. Debtors shall not be required to provide any further notice to any third-party of a proposed production of the Cleared Allocation Trial Documents pursuant to this Third Discovery Protocol, and Debtors shall have no liability with respect to any claim allegedly arising out of or resulting from such production, including but not limited to any claim that such disclosure breached a confidentiality agreement between Debtors and any other person or entity.

c. In the event a Requesting Party reasonably determines after review that one or more of the produced Cleared Allocation Trial Documents contain redacted information

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<sup>2</sup> The specified individuals are: Angela Anderson, Christopher Cianciolo, Michele Lee, Gillian McColgan, George Riedel, and John Veschi.

that is likely relevant to the issues in the Underlying Litigation, the Requesting Party may request that Debtors produce specified Cleared Allocation Trial Documents in unredacted form in accordance with the procedures set forth in Paragraphs 5(f) and 5(g) below.

Supplemental Document Discovery

4. In the event a Requesting Party reasonably believes that the Cleared Allocation Trial Documents are insufficient to meet its legitimate discovery needs, any further document discovery from Debtors, whether by agreement or Court order, shall be limited to one or more of the following document repositories: (i) the collection of approximately 3 million electronic documents produced by the Nortel estates for purposes of the Allocation Litigation (the “Allocation Litigation Database”); (ii) the collection of approximately 600,000 electronic documents collected by Debtors for purposes of the Allocation Litigation but not produced due to non-responsiveness and/or privilege (the “Unproduced Allocation Litigation Documents”); (iii) the LiveLink document management system maintained by Debtors (the “LiveLink Database”); (iv) the collection of paper documents and other physical items maintained for Debtors by Iron Mountain (“Iron Mountain Physical Items”); (v) the custodial laptop data collected by Debtors for the Allocation Litigation (the “Allocation Laptop Data”);<sup>3</sup> and (vi) the set of deposition transcripts created in the Allocation Litigation.

a. Absent agreement or Court order, Debtors shall not be required to search or produce documents located in the following repositories: (i) the hard drive containing copies of the electronic data rooms (“EDRs”) made available to bidders in connection with various Nortel asset auctions; and (ii) the archives of digital media (*e.g.*, magnetic tapes) now maintained

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<sup>3</sup> The custodians from whom Debtors collected data are: Chris Cianciolo, Art Fisher, John Mark Hearn, Gillian McColgan, Don Powers, George Riedel, John Veschi, and Richard Weiss.



for Debtors by Iron Mountain, primarily comprising disaster recovery back-ups made in the ordinary course of Debtors' business.

5. The following procedures shall govern any request that Debtors search and produce documents from one or more of the Allocation Litigation Database, Unproduced Allocation Litigation Documents, LiveLink Database, Iron Mountain Physical Items, and/or the Allocation Laptop Data (collectively, the "Data Repositories"):

a. Debtors and the Requesting Party shall meet and confer on a single list of no more than 25 electronic search terms (the "Agreed Search Terms") to be run against each of the Data Repositories. If the parties cannot reach agreement on the search terms, the dispute shall be submitted first to the Discovery Mediator for mediation. If no agreement is reached, the Requesting Party may file a motion with the Court seeking resolution of the dispute. Until such dispute is resolved, Debtors shall have no obligation to search any of the Data Repositories.

b. Debtors shall provide the Requesting Party with the number of documents (the "Hit Counts") returned by a search of each of the Data Repositories using the Agreed Search Terms.

c. After reviewing the Hit Counts, the Requesting Party and Debtors shall meet and confer in good faith to modify any search terms. The Requesting Party may propose a reasonable number of modified terms to be run against the Data Repositories for purposes of constructing optimal searches that return reasonable Hit Counts. If the parties cannot reach agreement on the modified search terms after consultation with the Discovery Mediator, the Court shall make this determination.

d. Once the Requesting Party and Debtors agree on a final set of search terms ("the Final ESI Searches"), Debtors will have the Final ESI Searches run against the selected

repositories to identify a collection of responsive documents, after which an electronic privilege filter will be run against the responsive documents in order to produce a collection of “Responsive/Non-Privileged Documents.” The electronic privilege filter applied to the collection of responsive documents shall be developed in consultation with the Requesting Party. To the extent Debtors intend to seek reimbursement of some or all of the costs associated with performing the Final ESI Searches and application of the electronic privilege filter, Debtors will provide the Requesting Party with an estimate of the expense required to perform these activities before undertaking them. The expense for these activities may be allocated in accordance with the Cost Sharing Procedure (as defined in Paragraph 5(k) below). If no agreement can be reached by the parties with respect to allocation of the cost of the Final ESI Searches or application of the electronic privilege filter after consultation with the Discovery Mediator, those issues shall be resolved by the Court.

e. With respect to potentially privileged documents identified by the electronic privilege filter, Debtors shall prepare and serve an electronically generated privilege log. Debtors and the Requesting Party shall meet and confer on the data to be provided by the electronically generated privilege log (*e.g.*, Custodian, To, From, Cc, Bcc, Date, Subject, and privilege filter terms “hit” by the document). Debtors shall not be obligated to undertake a document-by-document review of these presumptively privileged documents as an initial matter, but Debtors shall provide reasonable cooperation with respect to confirming the privileged status of any documents challenged by the Requesting Party. To the extent Debtors intend to seek reimbursement of some or all of the costs associated with preparation of the privilege log and/or performing any privilege review, Debtors will provide the Requesting Party with an estimate of the expense before performing these activities. The expense for Debtors’ efforts in preparation

of the privilege log, performing any privilege review, and/or addressing any challenges may be allocated in accordance with the Cost Sharing Procedure.

f. Prior to producing any of the Responsive/Non-Privileged Documents to the Requesting Party or Parties, Debtors shall provide notice of the proposed disclosure to all third-parties that Debtors reasonably believe may have a confidentiality and/or privilege interest in such documents. The notice shall inform all such third-parties that Debtors intend to produce the documents to the Requesting Party as soon as 14 days from the date of the notice unless an objection is filed with this Court and served on Debtors. Debtors shall serve a copy of any such objections on the Requesting Party. Upon request, an electronic copy of the entire collection of Responsive/Non-Privileged Documents shall be made available for review by such noticed third parties, on an “Outside Counsel’s Eyes Only” basis, to enable such third-parties to determine whether they wish to object. Any such review will be entirely at the third-party’s expense, but may include the use of electronic search facilities to be made available by Debtors and/or Debtors’ e-discovery vendor. Any expense incurred by Debtors in responding to or otherwise addressing such objections may be allocated in accordance with the Cost Sharing Procedure.

g. As soon as reasonably practical after the conclusion of the 14-day notice period, Debtors shall produce all of the documents within the collection of Responsive/Non-Privileged Documents for which no objection was filed with the Court. To the extent practicable, Debtors’ e-discovery vendor shall produce the documents in any format and in any manner reasonably specified by the Requesting Party. To the extent Debtors intend to seek reimbursement of some or all of the costs associated with the production of documents, Debtors will provide the Requesting Party with an estimate of the expense before performing these

activities. The expense for Debtors' efforts may be allocated in accordance with the Cost Sharing Procedure.

h. To the extent documents identified by the Agreed Search Terms are requested by multiple Requesting Parties concurrently, Debtors shall make reasonable efforts to coordinate any request for the allocation of costs among Debtors, the Requesting Parties that request the same document set, and/or the party asserting the Other Former Nortel Patent in the Underlying Litigation (the "Patent Asserting Party").

i. Debtors and all noticed third-parties shall have clawback rights with respect to the produced documents no less than those afforded them if they were the producing party under any protective order entered in the Underlying Litigation, but at a minimum Debtors and all noticed third-parties will have clawback rights that comport with the protections afforded by Federal Rule of Evidence 502(b) and Federal Rule of Civil Procedure 26(b)(5)(B).

j. So long as Debtors take reasonable steps to ensure compliance with the provisions of this Order, (i) Debtors shall have no liability with respect to any claim allegedly arising out of or resulting from such production of documents, including but not limited to any claim that such production breached a confidentiality agreement between Debtors and any other person or entity, and (ii) pursuant to Federal Rule of Evidence 502(d), any production of documents by Debtors pursuant to this Order shall not waive the privilege interests of Debtor or any noticed third-parties in any produced documents.

k. Cost Sharing Procedure. The expenses for any and all discovery efforts by Debtors pursuant to this Third Discovery Protocol may be allocated among Debtors, the Requesting Party, the Patent Asserting Party, and/or any objecting third party in a proportion to be agreed upon by the parties. If no agreement can be reached with respect to the expense

allocation for the referenced activities after consultation with the Discovery Mediator, those issues shall be resolved by the Court.

Discovery from Former Nortel Employees/Advisors

6. Depositions of Debtors, former employees of Debtors or any other Nortel entity (“Former Nortel Employees”), or Nortel’s former counsel, consultants or advisors (collectively, “Former Nortel Advisors”) may proceed without further order of the Court.

7. In the event any Former Nortel Employee or any Former Nortel Advisor is the subject of discovery in litigation involving Other Former Nortel Patents, including any request for the production of documents or deposition testimony, Debtors shall have no obligation to seek to prevent any such document production or attend any such deposition or in any other manner seek to prevent such Former Nortel Employee or Former Nortel Advisor from disclosing any information as to which Debtors are, were, or may be entitled to assert the protections of the attorney-client privilege, the attorney work product immunity, the common interest privilege, or any other applicable privilege or immunity, or any information as to which Debtors have, had, or may have confidentiality or privacy obligations (collectively, “Potentially Protected Information”).

a. Debtors shall have no liability with respect to any claim allegedly arising out of or resulting from any disclosure of Potentially Protected Information by any Former Nortel Employee or Former Nortel Advisor, whether or not Debtors have notice of discovery being sought from such Former Nortel Employee or Former Nortel Advisor.

b. Nothing in this Paragraph 7 shall be deemed to restrict any other person or entity from asserting any rights it claims to have to prevent or limit the disclosure of Potentially Protected Information or the production of documents or deposition testimony from a Former Nortel Employee or Former Nortel Advisor.

Apportionment of Costs Among Nortel Estates

8. Nothing in this Third Discovery Protocol, including Debtors' agreement to bear some or all of the costs of discovery efforts pursuant to this Third Discovery Protocol, nor any Order by this Court requiring Debtors to bear some or all of such costs, is intended to or shall (unless otherwise stated in such Order) restrict or otherwise prejudice Debtors' rights with respect to seeking to apportion among the various Nortel estates any costs incurred by Debtors in responding to third-party discovery.

END OF DOCUMENT

## **Exhibit B**

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

----- X  
In re : Chapter 11  
Nortel Networks Inc., *et al.*,<sup>1</sup> :  
 : Case No. 09-10138(KG)  
 : Jointly Administered  
 :  
 Debtors. : Hearing Date: May 5, 2015 at 10:00 a.m.  
 : Objections Due: April 28, 2015 at 4:00 p.m.  
----- X

**DECLARATION OF MARK M. SUPKO IN SUPPORT OF DEBTORS'  
MOTION FOR ENTRY OF THIRD DISCOVERY PROTOCOL IMPLEMENTING  
THE COURT'S PREVIOUS ORDERS EXTENDING AUTOMATIC STAY  
AND REGULATING THIRD-PARTY DISCOVERY**

I, Mark M. Supko, state and declare as follows:

1. I am a partner in the law firm of Crowell & Moring LLP, with an office at 1001 Pennsylvania Avenue NW, Washington, DC 20004.
2. I am a member in good standing of the bars of the State of New York and the District of Columbia, and I have been admitted *pro hac vice* in this proceeding.

**Pending Third-Party Discovery Involving Nortel Patents Sold to Rockstar**

3. The Second Discovery Protocol entered by the Court on December 8, 2014 applies to "[a] third-party discovery of Debtors in connection with litigations involving 'Former

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<sup>1</sup> 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). Contact information for the U.S. Debtors and their petitions are available at <http://dm.epiq11.com/nortel>.



Nortel Patents,” defined as “patents sold to Rockstar Bidco, LP through the Asset Sale Agreement dated June 30, 2011 (the ‘Nortel-Rockstar ASA’) regardless of the current owner of such patents.” D.I. 14906-1, pg. 1 and n. 2.

4. On information and belief, Rockstar Bidco, LP or a related Rockstar entity sold or otherwise transferred some number of the patents acquired from Nortel to Spherix Incorporated (“Spherix”).

5. Crowell & Moring is currently representing Nortel Networks Inc. (“NNI”) in connection with responding to third-party discovery requests from defendants in the following litigations involving assertions of former Nortel patents by Spherix:

a. *Spherix Inc. v. VTech Telecommunications Ltd. et al.*, No. 3:13-cv-3494 (N.D. Tex.); and

b. *Spherix Inc. v. Cisco Systems, Inc.*, No. 1:14-cv-00393-SLR (D. Del.).

6. Third-party discovery against NNI by VTech and Cisco has thus far proceeded in an orderly and cooperative manner in accordance with the terms of the Second Discovery Protocol. NNI has produced copies of the Cleared Allocation Litigation Documents to the requesting parties, and NNI is in the process of providing “hit counts” for each requesting party’s list of electronic search terms to be run against various document repositories identified in the Second Discovery Protocol.

**Pending Third-Party Discovery Involving Other Former Nortel Patents**

7. On or about February 10, 2015, I was contacted by counsel for Metaswitch Networks Ltd. (“Metaswitch”) regarding Metaswitch’s intention to serve third-party subpoenas on NNI in connection with two related patent litigations pending in the U.S. District Court for the Eastern District of Texas:

a. *Genband US LLC v. Metaswitch Networks Ltd., et al.*, No. 2:14-cv-33-JRG (E.D. Tex.); and

b. *Metaswitch Networks Ltd. v. Genband US LLC*, No. 2:14-cv-744-JRG (E.D. Tex.).

8. On information and belief, Genband is asserting at least 5 patents against Metaswitch that were originally issued to Nortel Networks Limited but were later acquired by Genband US LLC (“Genband”) when it acquired one of the eight business units that Nortel sold in or around 2009-2010 in connection with these bankruptcy proceedings.

9. Metaswitch’s discovery requests to NNI are reflected in the subpoenas attached hereto at Tabs 1 and 2.

10. Over the past two months, we have been working in a cooperative manner with Metaswitch’s counsel in an effort to develop an agreed third-party discovery protocol consistent with the Second Discovery Protocol. The result of that effort is reflected in a draft Agreement Between Metaswitch and Nortel Networks Inc., attached hereto at Tab 3.

11. Although substantial progress has been made by NNI and Metaswitch in agreeing on a structure for balancing Metaswitch’s discovery needs against the burden and expense on NNI, one critically important issue the parties are unable to resolve by agreement is the risk of third-party liability that NNI could face as a result of producing non-public documents to Metaswitch in which third-parties (*e.g.*, Genband, other purchases of Nortel business units/assets, licensees under former Nortel patents) may claim confidentiality and/or privilege interests. Consequently, NNI informed counsel for Metaswitch that NNI intended to move this Court for entry of an additional discovery protocol substantially the same as the Second Discovery

Protocol to govern third-party discovery in litigations involving former Nortel patents other than those sold to Rockstar, including but not limited to the patents acquired by Genband.

12. Metaswitch has been understanding of NNI's desire to seek the protection of this Court before producing any non-public documents in response to Metaswitch's third-party discovery requests, albeit expressing concern about the possible impact on its ability to complete the desired discovery from NNI prior to the May 6, 2015 fact discovery cut-off in the earlier of the two pending litigations between Genband and Metaswitch.

13. In addition to Metaswitch's third-party discovery requests, NNI was served with a third-party subpoena (attached hereto at Tab 4) on or about December 3, 2014 by Aruba Networks, Inc., Netgear Inc. and Belkin International, Inc. in connection with the following patent litigations:

a. *Innovative Wireless Solutions LLC v. Aruba Networks Inc.*, No. 1:13-cv-01858-RGA (D. Del.);

b. *Innovative Wireless Solutions LLC v. Belkin International, Inc.*, No. 1:13-cv-01859-RGA (D. Del.);

c. *Innovative Wireless Solutions LLC v. Motorola Solutions Inc.*, No. 1:13-cv-01864-RGA (D. Del.); and

d. *Innovative Wireless Solutions LLC v. Belkin International, Inc.*, No. 1:13-cv-01865-RGA (D. Del.).

14. On information and belief, at least some of the patents being asserted by Innovative Wireless Solutions LLC ("Innovative Wireless") in these litigations were originally issued to Northern Telecom Limited and were later assigned to Elastic Networks Inc., a Nortel subsidiary formed in 1998 that was spun off in May 1999. Ownership of the patents thereafter

passed through several other entities unrelated to Nortel before the patents were apparently acquired by Innovative Wireless.

15. Upon receiving the above-referenced subpoena, we informed counsel for the requesting parties of the Order Extending Automatic Stay and Regulating Third-Party Discovery [D.I. 14746] and the Order Approving Second Discovery Protocol in Connection with Order Extending Automatic Stay and Regulating Third Party Discovery [D.I. 14906]. In subsequent discussions among counsel, the requesting parties confirmed their willingness to proceed in accordance with the terms of the Second Discovery Protocol. At present, we are waiting for the requesting parties to sign and return the retention agreement for the Discovery Mediator and provide electronic search terms before proceeding. However, if the requesting parties remain interested in proceeding with this third-party discovery, NNI will face the same risk of third-party liability discussed in Paragraph 11 above.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 7th day of April, 2015.

/s/ Mark M. Supko  
Mark M. Supko

# **Tab 1**

UNITED STATES DISTRICT COURT  
for the  
Eastern District of Texas

GENBAND US LLC,

*Plaintiff*

v.

Metaswitch Networks LTD, et al.

*Defendant*

Civil Action No. 2:14-cv-33

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Nortel Networks, Inc.*(Name of person to whom this subpoena is directed)*

☒ **Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: **See Schedule A**

Place: Quinn Emanuel Urquhart & Sullivan, LLP 50 California St., 22 <sup>nd</sup> Floor San Francisco, CA 94111	Date and Time: April 17, 2015
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☐ **Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 4, 2015

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**/s/ Alex Binder**Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Metaswitch Networks, LTD and Metaswitch Networks Corp. who issues or requests this subpoena, are:

Alex Binder, Quinn Emanuel Urquhart & Sullivan, LLP  
50 California St., 22<sup>nd</sup> Floor, San Francisco, CA 94103

Email: AlexBinder@quinnemanuel.com  
Tel: (415) 875-6600

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:14-cv-33

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's  
signature*

\_\_\_\_\_  
*Printed name and  
title*

\_\_\_\_\_  
*Server's  
address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
  - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
  - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



**SCHEDULE A**

**DEFINITIONS**

The following definitions apply throughout these Topics.

1. “Action” shall mean the cases entitled *Genband US LLC v. Metaswitch Networks Ltd et al.*, Case No. 2:14-cv-33, and *Metaswitch Networks Ltd. v. GENBAND US LLC, et al.*, Case No. 14-cv-744, both currently pending in the United States District Court for the Eastern District of Texas.

2. “Metaswitch,” shall mean and refer to Metaswitch Networks Ltd, Data Connection Ltd, and Metaswitch Networks Corp.

3. “Accused Product” shall mean any Product made or marketed by or on behalf of Metaswitch that, when made, used, offered for sale, sold, imported, or otherwise practiced in the United States (either by itself or in combination with other devices) by or on behalf of Metaswitch or any user, allegedly constitutes, practices, incorporates, or embodies a device, process, or method claimed in one or more of the Asserted Patents, including but not limited to Metaswitch Perimeta Products, including its Session Border Controllers and Service Brokers, Metasphere Call Feature Server, Metaswitch DC-SBC, Metaswitch Integrated Softswitches (*e.g.*, VP2510, VP3500, VP3510, VP6010, VP6050), Metaswitch Universal Media Gateways (*e.g.*, MG2510, MG3510, MG6010, MG6050), the Metasphere Telephony Application Server (“MTAS”), Accession, and CommPortal.

4. “GENBAND US LLC,” “GENBAND,” or “Genband” shall each mean and refer to GENBAND US LLC or General Bandwidth Inc., individually and collectively, including their agents, officers, directors, employees, consultants, representatives, attorneys, predecessors and successors in interest, subsidiaries, affiliates, parents, divisions, joint ventures, licensees,

franchisees, assigns, members and related entities, and any other legal entities, whether foreign or domestic that are owned or controlled by Genband, and all predecessors and successors in interest to such entities, and any entity owned in whole or in part by, affiliated with, or controlled in whole or in part by Genband, as well as the agents, officers, directors, employees, consultants, representatives and attorneys of any such entities.

5. “Nortel” shall mean and refer to Nortel Networks Inc., Nortel Networks Corp., Nortel Networks Ltd., and Nortel Networks Cable Solutions, Inc., including their agents, officers, directors, employees, consultants, representatives, attorneys, predecessors and successors in interest, subsidiaries, affiliates, parents, divisions, joint ventures, licensees, franchisees, assigns, members and related entities, and any other legal entities, whether foreign or domestic that are owned or controlled by Nortel, and all predecessors and successors in interest to such entities, and any entity owned in whole or in part by, affiliated with, or controlled in whole or in part by Nortel, as well as the agents, officers, directors, employees, consultants, representatives and attorneys of any such entities.

6. “CVAS Purchase” means the acquisition, sale, and/or purchase of all (or substantially all) the assets of the Nortel Carrier VoIP and Application Solutions Business (CVAS) by Genband.

7. “CVAS Unit” means the Nortel Carrier VoIP and Application Solutions Business (CVAS), including all its assets, Products, employees, liabilities, obligations, patents, or other items.

8. The “Genband Asserted Patents” shall mean United States Patent Nos. 6,772,210 (“the ’210 Patent”), 6,791,971 (“the ’971 Patent”), 6,885,658 (“the ’658 Patent”), 6,934,279 (“the ’279 Patent”), 7,995,589 (“the ’589 Patent”), 7,047,561 (“the ’561 Patent”), 7,184,427

(“the ’427 Patent”), 7,990,984 (“the ’984 Patent”), 6,879,667 (“the ’667 Patent”), U.S. Patent No. 7,162,024 (“the ’024 Patent”), U.S. Patent No. 7,680,252 (“the ’252 Patent”), U.S. Patent No. 7,953,210 (“the ’3210 Patent”), and U.S. Patent No. 8,600,006 (“the ’006 Patent”) individually and collectively, including all underlying patent applications, continuations, continuations-in-part, divisionals, parents, progeny, reexaminations, or reissues thereof and all foreign counterpart applications and patents which claim the same subject matter.

9. The “Nortel Asserted Patents” shall mean United States Patent Nos. 6,772,210 (“the ’210 Patent”), 6,791,971 (“the ’971 Patent”), 6,885,658 (“the ’658 Patent”), 6,934,279 (“the ’279 Patent”), 7,995,589 (“the ’589 Patent”), 7,047,561 (“the ’561 Patent”), and U.S. Patent No. 8,600,006 (“the ’006 Patent”) individually and collectively, including all underlying patent applications, continuations, continuations-in-part, divisionals, parents, progeny, reexaminations, or reissues thereof and all foreign counterpart applications and patents which claim the same subject matter.

10. The terms “Nortel Related Patent” or “Nortel Asserted Patents Family Tree” means any domestic or foreign patent or patent application to, from, or through which any of the Nortel Asserted Patents claim priority; and all domestic or foreign patents and patent applications (including without limitation the Asserted Patents) that claim priority to, from, or through the aforesaid applications. This includes without limitation: (a) any continuation, continuation in part, divisional, or any other patent or patent application (including rejected, abandoned, provisional, or pending applications) derived in whole or in part from said patents or applications, and all foreign counterpart patents or patent applications (including rejected, abandoned, provisional, or pending applications); and (b) all domestic or foreign patents or

patent applications (including rejected, abandoned, provisional, or pending applications) that claim priority to or through any Nortel Asserted Patent.

11. “Nortel Transferred Patents” means all patents transferred from Nortel to Genband, including those patent listed on reel numbers: 27992-443; 24879-519; 24879-475, accessed via:

<http://assignment.uspto.gov/#/search?adv=patAssignorName%3ANortel%2BpatAssigneeName%3AGenband&sort=patAssignorEarliestExDate%20desc%2C%20id%20desc&synonyms=false>.

12. The '612 Patent shall mean U.S. Patent No. 6,937,612, entitled “Communications method and apparatus,” all underlying patent applications, all continuations, continuations-in-part, divisionals, reissues, and any other patent applications in the '612 Patent family.

13. Nortel's Call Manager Software shall include, both collectively and individually Nortel's Personal and Symposium Call Manager, Fastview, Fastcall, and Multimedia conferencing software (“NCM”), which are described (by reference only) in Desktop TAPI Service Provider 1.5 User's Guide (October 1997), the Enterprise Edge Personal Call Manager User Guide (1999), and Norstar Computer Telephony Integration – Norstar Handbook (January 1999) (“Handbook”), attached as Exs. 1, 2, and 3, respectively.

14. “Zhone Products” means the AccessNode and UE9000 , including any versions of these products, or similar or related products, created prior to October 2005, as referenced in, by way of example only, Ex. 4.

15. “3GPP” shall mean the 3rd Generation Partnership Project.

16. “ATIS” shall mean the Alliance for Telecommunications Industry.

17. “CableLabs” shall mean Cable Television Laboratories, Inc.

18. “ETSI” shall mean the European Telecommunications Standards Institute.
19. “IETF” shall mean the Internet Engineering Task Force.
20. “ITU-T” shall mean the ITU Telecommunication Standardization Sector.
21. “Standards Setting Organization” or “SSO” shall mean an organization that adopts standards governing an industry or technological field, and includes without limitation 3GPP, ATIS, CableLabs, ETSI, IETF, and ITU-T.
22. “FRAND” or “RAND” may be used interchangeably and shall mean fair, reasonable, and non-discriminatory.
23. “FRAND committed” or “RAND committed” means subject to a FRAND and/or RAND commitment.
24. “Source Code” includes source code, hardware code, machine code, assembly code, or code written in any programming language, and code that can be compiled or acted upon by a processor, any listings or printouts thereof, and any release notes describing the features or modifications of such code.
25. “Executable Software” means computer files containing encoded instructions capable of being executed by a processing unit (e.g., a central processing unit or microcontroller), and any release notes describing the features or modifications of such files. The term shall include, without limitation, firmware and executable binary files.
26. “Communication(s)” shall mean, without limitation, any transmittal, conveyance or exchange of a word, statement, fact, Thing, idea, Document, instruction, information, demand, question or other information by any medium, whether by written, oral or other means, including electronic communications and electronic mail.

27. “Date(s)” shall mean the exact date(s), if known, or the closest approximation to the exact date(s) as can be specified, including without limitation the year, month, week in a month, or part of a month.

28. “Document(s)” shall be construed under the broadest possible construction under Federal Rule of Civil Procedure 34 and Federal Rule of Evidence 1001. The term shall include without limitation any written, recorded, graphic, or other matter, whether sent or received or made or used internally, however produced or reproduced and whatever the medium on which it was produced or reproduced (whether on paper, cards, charts, file, or printouts; tapes, discs, belts, video tapes, audiotapes, tape recordings, cassettes, or other types of voice recording or transcription; computer tapes, databases, e-mails; pictures, photographs, slides, films, microfilms, motion pictures; or any other medium), and any other tangible item or Thing of readable, recorded, or visual material of whatever nature including originals, drafts, and all non-identical copies of each Document (which, by reason of any variation, such as the presence of absence of hand-written notes or underlining, represents a distinct version). By way of example, the term “Document(s)” as used herein shall include: correspondence; blueprints; memoranda; notes; diaries; letters; telegraphs; telegrams; telexes; emails; metadata; minutes; agendas; contracts; reports; studies; checks; statements; receipts; returns; summaries; pamphlets; circulars; press releases; advertisements; books; inter-office and intra-office communications; handwritten or typewritten notes; notations or summaries of telephone conversations, meetings, or conferences; bulletins; computer printouts; databases; teletypes; telefax; invoices; worksheets; photographs; tape recordings; patents and patent application materials; patent appraisals; printed publications; trademark applications, certificates of registration, opinions of counsel; memoranda of agreements, assignments, licenses; reports of or summaries of either negotiations within or

without the corporation or preparations for such; and all other tangible items of readable, recorded, or visual material of any kind.

29. “Entity” shall mean corporation, company, firm, partnership, joint venture, association, governmental body or agency, or Persons other than a natural person.

30. Whenever Metaswitch asks Nortel to “identify” a date or dates, Nortel shall respond by providing the exact date(s) if known or obtainable, or the closest approximation to the exact date(s) as can be specified, including the year, month, week in a month, or part of a month or week.

31. Whenever Metaswitch asks Nortel to “identify” a natural Person, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the Person’s full name; (b) his or her present or last known home address and telephone number; (c) his or her present or last known business address and telephone number; (d) his or her present or last known title or occupation; and (e) his or her present or last known employer. When the Person in question is a current or former director, officer, manager, or other employee of Genband or Nortel, Genband’s response additionally shall include, to the extent known or obtainable, at least the following information: (a) the title(s) or position(s) held by the Person at Genband or Nortel; (b) the time periods during which he or she held those title(s) or positions(s); and (c) a description of his or her responsibilities to those title(s) or position(s).

32. Whenever Metaswitch asks Nortel to “identify” any legal entity, such as a corporation, company, firm, partnership, joint venture, association, government body or agency, or Person other than a natural Person, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the entity’s full legal name; (b) its place of

incorporation or organization; (c) its principal place of business; and (d) the nature of the business conducted by the entity.

33. Whenever Metaswitch asks Nortel to “identify” a Document, Nortel shall respond by specifying the Document in sufficient detail to enable Metaswitch to locate the Document, including by providing at least the following information: (a) the production number range; (b) the date appearing on such Document, or, if no date appears thereon, the approximate date the Document was prepared; (c) the identifying code number, file number, title, or label of such Document; (d) a general description of the nature (e.g., letter, memorandum, drawing, prototype) and subject matter of the Document; (e) the name of each Person having possession, custody, or control of such Document; (f) if the Document existed at one time but does not presently exist, the reason(s) why it no longer exists and the identity of the last Person having custody of it; and (g) if the Document is in a foreign language, whether a partial or complete English translation of the Document exists.

34. Whenever Metaswitch asks Nortel to “identify” a Communication, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the form of the Communication (e.g., telephone call, meeting, letter); (b) a summary of the substance of the Communication; (c) the date and place of the Communication; (d) a list identifying each Person who participated in or was present at, involved in, or connected with the Communication; and (e) a list identifying each Document that memorializes or refers to the Communication.

35. Whenever Metaswitch asks Nortel to “identify” a tangible Thing that is not a Document or Communication (including any Products manufactured, developed, sold, or imported by Genband), Nortel shall respond by providing, to the extent known or obtainable, at



least the following information: (a) the product name(s), product number(s), version number(s), and revision number(s); (b) the date(s) when the Thing first was introduced for sale and first was sold; and (c) all team name(s) or project title(s) used in connection with the design, development, testing, or engineering of that tangible Thing.

36. Whenever Metaswitch asks Nortel to “identify” a process, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the date the process first was used; (b) the date that Products or other objects made by the process first were sold; (c) all numbers or codes used to refer to the process, including process revision numbers or codes; (d) all process names; and (e) all team names or project titles used in connection with the design, development, testing, or engineering of that process.

37. Whenever Metaswitch asks Nortel to “describe” an act, event, instance, occasion, transaction, conversation, or Communication, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the date and place thereof and of any related occurrences; (b) a list identifying the individual participants and all other knowledgeable Persons; (c) separate summaries of what each individual participant did or said; (d) a list identifying all Documents or Things used or prepared in connection therewith or making any reference thereto; and (e) any other relevant facts and related Documents or Communications.

38. “Licensee” or “License” means and includes each and every sub-licensee or sublicense, and is intended to include settlements, settlement agreements, non-assert agreements, covenants not to sue, and agreements not to sue.

39. “Person(s)” shall mean any natural person or any business, proprietorship, firm, partnership, corporation, association, organization, or other legal entity. The acts of a Person

shall include the acts of directors, officers, owners, consultants, members, employees, agents, attorneys or other representatives acting on the Person's behalf.

40. "Product(s)" shall mean any machine, manufacture, apparatus, device, software, system, instrument, mechanism, appliance, assemblage of components/parts (either individually or collectively), process, or method which are designed to function together electrically, mechanically, chemically, or otherwise, to achieve a particular function or purpose, including those offered for sale, sold, or under development.

41. "Thing(s)" shall include any tangible objects of any kind and nature other than a Document, including prototypes, models, and physical specimens thereof.

42. "Participate" shall mean, without limitation, to communicate, attend, exchange information with, engage, cooperate, observe, contact, publicize, or otherwise interact with.

43. "Refer to," "referring to," "relate to," "related to," "relating to," "regarding," or "concerning" shall mean in whole or in part constituting, containing, contradicting, embodying, commenting on, depicting, demonstrating, refuting, evidencing, representing, discussing, reflecting, describing, analyzing, identifying, mentioning, stating, summarizing, bearing upon, pertaining to, comprising, involving, alluding to, commenting on, referring directly or indirectly to, dealing with, or in any way pertaining to.

44. "Third Party" shall mean all Persons who are not parties to this Litigation, as well as their officers, directors, employees, agents and attorneys.

45. Where a Topic below names a corporation or other legal entity, the Topic includes within its scope any parent, Predecessors-in-Interest, subsidiaries, affiliates, past or present directors, officers, employees, agents, and representatives thereof, including attorneys, Consultants, accountants, and investment bankers.

46. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

47. The terms “any,” “all,” “every,” and “each” shall each mean and include the other.

48. The singular form of any word shall be deemed to include the plural. The plural form of any word shall be deemed to include the singular.

49. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

50. “Include” and “including” shall mean including without limitation.

### **INSTRUCTIONS**

The following instructions shall apply to each of the Document Requests herein:

1. You are to produce the original and each non-identical copy or draft of each Document(s), Source Code, or Thing(s) requested herein that is in Your possession, custody or control in its entirety, without abbreviation or redaction.

2. If any portion of a Document, Source Code or Thing is responsive to a request, the entire Document, Source Code or Thing should be produced including all attachments and enclosures, redacting only privileged material, if any.

3. All Documents, Source Code and Things should be produced in the same file or other organizational environment in which they are maintained in the ordinary course of business. For example, a Document that is part of a file, docket or other grouping should be physically produced together with all other Documents from said file, docket or grouping, in the same order or manner of arrangement as the original. Additionally, to the extent produced in hardcopy, each Document should be produced stapled, clipped or otherwise bound or connected

in the same manner as the original. File folders with tabs or labels or directories of files identifying Documents should be produced intact with such Documents. Documents attached to each other should not be separated.

4. Each item produced should bear unique identifying control numbers (e.g., Bates labels) on each item or page if the item is a Document.

5. Color copies of Documents are to be produced where color is necessary to interpret or understand the contents.

6. Electronic records and computerized information should be produced in their native electronic format, together with a description of the system from which they were derived sufficient to permit rendering the records and information intelligible.

7. If You believe that You are not required to provide any Document, Source Code or Thing on the grounds of a privilege or protection that You are not prepared to waive, pursuant to Federal Rule of Civil Procedure 26(b)(5), please provide a written list describing each Document, Source Code, Executable Software, or Thing not produced, using the unique identifying control numbers (e.g., Bates labels) to specify Documents or ranges where appropriate. For each item on the list, include the following:

- (i) the specific privilege asserted;
- (ii) all Persons making or receiving the Document, Source Code or Thing;
- (iii) the steps taken to ensure the confidentiality of the Document, Source Code or Thing, including affirmation that no unauthorized Persons have received the Document, Source Code or Thing;
- (iv) the date of the Document, Source Code or Thing; and
- (v) the subject matter of the Document, Source Code or Thing.

**DOCUMENTS TO BE PRODUCED**

**DOCUMENT REQUEST NO. 1:**

All Documents and Communications relating to the Nortel Asserted Patents and/or to any Related Nortel Patents.

**DOCUMENT REQUEST NO. 2:**

Documents and Communications sufficient to show Nortel's first awareness of Metaswitch (Data Connection Ltd.) and its Accused Products.

**DOCUMENT REQUEST NO. 3:**

Documents and Communications sufficient to show the corporate and legal structure, capitalization, and management of Nortel Networks Cable Solutions Inc., including its relationship with the other Nortel Networks entities, such as Nortel Networks Inc., Nortel Networks Corp., and Nortel Networks Ltd., and any common ownership, common employees, common management, common control, common or shared capitalization, intermingling of business activity, observance of corporate formalities, and payment of dividends.

**DOCUMENT REQUEST NO. 4:**

All Documents and Communications relating to licensing any of the Nortel Asserted Patents or Related Nortel Patents, including, but not limited to, all license agreements, cross licenses, covenants not to sue, or non-assertion agreements that cover any of the Nortel Asserted Patents, all offers to license any of the Nortel Asserted Patents to Genband or to any Third Party, all draft agreements, any negotiation of any agreement or royalty.

**DOCUMENT REQUEST NO. 5:**

Documents and Communications sufficient to identify every attempt by Nortel to enforce any of the Nortel Asserted Patents, Related Nortel Patents, or Transferred Patents, either in the United States or abroad.

**DOCUMENT REQUEST NO. 6:**

All Documents and Communications relating to any decision, by Nortel, Genband, or any Third Party, to file or decline to file any potential or actual litigation or other claim relating to any of the Nortel Asserted Patents, the Related Nortel Patents, or to the Transferred Patents.

**DOCUMENT REQUEST NO. 7:**

All Documents and Communications relating to any patent claim charts, infringement or invalidity evaluations, or comparisons between the Nortel Asserted Patents and any Genband, Metaswitch, or Third-Party Product.

**DOCUMENT REQUEST NO. 8:**

All Documents and Communications relating to the CVAS Purchase, including any Documents shared between Genband and Nortel as part of any due diligence; any meeting or other discussion between Genband and Nortel; the structure and formation of the CVAS Unit (including an organizational chart); any decision regarding the organization of the CVAS Unit, including how to structure its departments, employees, assets, and liabilities; and the transfer (or decision not to transfer) any aspect of the CVAS Unit and its underlying departments, employees, assets, and liabilities.

**DOCUMENT REQUEST NO. 9:**

Documents sufficient to show all Nortel employees transferred to Genband.

**DOCUMENT REQUEST NO. 10:**

All Documents and Communications relating to any government inquiry or investigation relating to the CVAS Purchase, including all Documents and Communications with or relating to the Antitrust Division of the U.S. Department of Justice or the Federal Trade Commission (“FTC”).

**DOCUMENT REQUEST NO. 11:**

All Documents and Communications relating to any bid, offer, or other proposal, whether or not that bid, offer, or other proposal was ever finalized, executed, or considered, for Nortel's CVAS Unit, the CVAS Patent Portfolio, any Nortel Asserted Patent, Nortel Related Patent, or Nortel Transferred Patent.

**DOCUMENT REQUEST NO. 12:**

All Documents and Communications relating to any confidentiality or non-disclosure agreements executed between Nortel and Genband and/or any Third Party relating to the sale, merger, acquisition, or purchase of the CVAS Unit, the Nortel Asserted Patents, the Related Nortel Patents, and/or the Nortel Transferred Patents.

**DOCUMENT REQUEST NO. 13:**

Documents sufficient to identify all Persons involved in the negotiation or authorization of the CVAS Purchase.

**DOCUMENT REQUEST NO. 14:**

All Documents and Communications relating to the decision to include or exclude any patent related to voice over internet protocol ("VoIP") technology in the patent portfolio in the CVAS purchase or to any other sale of Nortel intellectual property from 2009-2011.

**DOCUMENT REQUEST NO. 15:**

All Communications with Genband relating to any Nortel Asserted Patent, Related Nortel Patent, Transferred Nortel Patent, to this Action, or to Metaswitch.

**DOCUMENT REQUEST NO. 16:**

All Documents and Communications relating to the value of any Nortel Asserted Patent, Transferred Nortel Patent, or Related Nortel Patent, including any valuation performed by Nortel, Genband, and/or a Third Party.

**DOCUMENT REQUEST NO. 17:**

All Documents and Communications relating to any efforts You made to license, sell, monetize, or otherwise generate revenue from Nortel's Asserted Patents or Transferred Nortel Patents, including but not limited to any presentations, meeting minutes, license negotiations, sales negotiations, claim charts, infringement analyses, validity analyses, notice letters, cease and desist letters, offers, draft license agreements, and term sheets.

**DOCUMENT REQUEST NO. 18:**

All Documents and Communications relating to the sales, revenue, income, profit, gross margin, costs, expenses, forecasts, projections, or budgets for any Nortel Product or service that relates to or resulted in any claim of the Nortel Asserted Patents or the Related Nortel Patents.

**DOCUMENT REQUEST NO. 19:**

All Documents and Communications relating to the filing and prosecution of the Nortel Asserted Patents or Related Nortel Patents, including but not limited to all draft and final versions of such applications, office actions, draft and final versions of responses to office actions.

**DOCUMENT REQUEST NO. 20:**

All Documents and Communications relating to the Nortel Asserted Patents or Related Nortel Patents, submitted to the U.S. Patent & Trademark Office or patent office of another



jurisdiction during the prosecution of any of the Nortel Asserted Patents or Related Nortel Patents.

**DOCUMENT REQUEST NO. 21:**

All Documents and Communications related to the '612 Patent.

**DOCUMENT REQUEST NO. 22:**

Documents and Communications related to a generic service framework ("GSF") for the DMS-100, digital multiplex switching device, or related service.

**DOCUMENT REQUEST NO. 23:**

Documents and Communications sufficient to identify, by build or version name or number, all Products used or sold prior to June 7, 1999 related to any GSF efforts, including any user guides, marketing, advertising, or promotional efforts relating to the same.

**DOCUMENT REQUEST NO. 24:**

Documents and Communications sufficient to show the time period during which each Product used or sold prior to June 7, 1999 relating to any GSF efforts was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 25:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to June 7, 1999 relating to any GSF efforts.

**DOCUMENT REQUEST NO. 26:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to March 13, 2000 relating to Nortel's Call Manager

Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 27:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to March 13, 2000 relating to Nortel's Call Manager Software.

**DOCUMENT REQUEST NO. 28:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Call Manager Software used or sold prior to March 13, 2000, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 29:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to October 2005 relating to the Zhone Products was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 30:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of the Zhone Products used or sold prior to October 2005, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 31:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to October 2005 relating to the Zhone Products.

**DOCUMENT REQUEST NO. 32:**

Documents and Communications sufficient to show the technical operation or use of any functionality related to the ability to connect calls between subscribers connected to any of the Zhone Products, whether or not the Zhone Products are operating in emergency stand alone feature (for example, as referenced in Exhibit 4), included in any Products (including software) created or sold by prior to October 2005.

**DOCUMENT REQUEST NO. 33:**

Documents and Communications sufficient to show the technical operation or use of any functionality related to emergency stand alone feature (for example, as referenced in Exhibit 4) in any of the Zhone Products, included in any Products (including software) created or sold by You prior to October 2005.

**DOCUMENT REQUEST NO. 34:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Border Control Point Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 35:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Border Control Point Software.

**DOCUMENT REQUEST NO. 36:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Border Control Point Software used or sold prior to December 27, 2006, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 37:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Communication Server 2000 (CS 2000) Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 38:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Communication Server 2000 (CS 2000) Software.

**DOCUMENT REQUEST NO. 39:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Communication Server 2000 (CS 2000) Software used or sold prior to December 27, 2006, including Documents and Communications relating to any

marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 40:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Communication Server 1500 (CS 1500) Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 41:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Communication Server 1500 (CS 1500) Software.

**DOCUMENT REQUEST NO. 42:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Communication Server 1500 (CS 1500) Software used or sold prior to December 27, 2006, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 43:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Universal Signaling Point Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 44:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Universal Signaling Point Software.

**DOCUMENT REQUEST NO. 45:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Universal Signaling Point Software used or sold prior to December 27, 2006, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 46:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Media Gateway 9000 Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 47:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Media Gateway 9000 Software.

**DOCUMENT REQUEST NO. 48:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Media Gateway 9000 Software used or sold prior to December 27, 2006, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 49:**

Documents or Communications sufficient to show the technical operation or use of any functionality related to an emergency stand alone feature in any of the Your products—including in any media gateways, softswitches, or gatekeepers—including software, created or sold by You prior to October 2005.

**DOCUMENT REQUEST NO. 50:**

Documents and Communications sufficient to show the membership and participation of Nortel in any SSO, including without limitation 3GPP, ATIS, CableLabs, ETSI, IETF, and ITU-T.

**DOCUMENT REQUEST NO. 51:**

Documents and Communications sufficient to show any agreements, declarations, licenses, or other rights in the Nortel Asserted Patents, the Related Nortel Patents, or the Transferred Patents given to any SSO or its members, including without limitation 3GPP, ATIS, CableLabs, ETSI, IETF, and ITU-T.

**DOCUMENT REQUEST NO. 52:**

Documents and Communications sufficient to show Nortel's involvement or participation in the CableLabs PacketCable and/or DOCSIS standards, including access to CableLabs (or its members') information, equipment, or facilities, attendance at CableLabs meetings, submissions or contributions to CableLabs specifications, first access or receipt of CableLabs specifications, and legal agreements or licenses with CableLabs (or its members) relating to or resulting from Nortel's participation in the CableLabs PacketCable and/or DOCSIS standards.

**DOCUMENT REQUEST NO. 53:**

All Documents and Communications relating to any FRAND royalty rate for the Nortel Asserted Patents, the Related Nortel Patents, or the Transferred Patents.



## **Tab 2**

for the

Metaswitch Networks LTD,

Plaintiff

 $\mathbf{v}_i$ 

GENBAND US LLC,

Defendant

Civil Action No. 2:14-cv-744

To: Nortel Networks, Inc.

(Name of person to whom this subpoena is directed)

$$X$$

Place: Quinn Emanuel Urquhart & Sullivan, LLP  
50 California St., 22<sup>nd</sup> Floor  
San Francisco, CA 94111

Date and Time: April 17, 2015

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Place:

Date and Time:

Date: March 4, 2015

CLERK OF COURT

OR

/s/ Alex Binder

*Signature of Clerk or Deputy Clerk*

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* \_\_\_\_\_  
Metaswitch Networks, LTD and Metaswitch Networks Corp. \_\_\_\_\_ who issues or requests this subpoena, are:

Alex Binder, Quinn Emanuel Urquhart & Sullivan, LLP  
50 California St., 22<sup>nd</sup> Floor, San Francisco, CA 94103

Email: [AlexBinder@quinnemanuel.com](mailto:AlexBinder@quinnemanuel.com)  
Tel: (415) 875-6600

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:14-cv-744

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's  
signature*

\_\_\_\_\_  
*Printed name and  
title*

\_\_\_\_\_  
*Server's  
address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
  - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
  - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- (B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**SCHEDULE A**

**DEFINITIONS**

The following definitions apply throughout these Topics.

1. “Action” shall mean the cases entitled *Metaswitch Networks Ltd. v. GENBAND US LLC, et al.*, Case No. 14-cv-744 and *Genband US LLC v. Metaswitch Networks Ltd et al.*, Case No. 2:14-cv-33, both currently pending in the United States District Court for the Eastern District of Texas.

2. “Metaswitch,” shall mean and refer to Metaswitch Networks Ltd, Data Connection Ltd, and Metaswitch Networks Corp.

3. “Accused Product” shall mean any Product made or marketed by or on behalf of Metaswitch that, when made, used, offered for sale, sold, imported, or otherwise practiced in the United States (either by itself or in combination with other devices) by or on behalf of Metaswitch or any user, allegedly constitutes, practices, incorporates, or embodies a device, process, or method claimed in one or more of the Asserted Patents, including but not limited to Metaswitch Perimeta Products, including its Session Border Controllers and Service Brokers, Metasphere Call Feature Server, Metaswitch DC-SBC, Metaswitch Integrated Softswitches (*e.g.*, VP2510, VP3500, VP3510, VP6010, VP6050), Metaswitch Universal Media Gateways (*e.g.*, MG2510, MG3510, MG6010, MG6050), the Metasphere Telephony Application Server (“MTAS”), Accession, and CommPortal.

4. “GENBAND US LLC,” “GENBAND,” or “Genband” shall each mean and refer to GENBAND US LLC or General Bandwidth Inc., individually and collectively, including their agents, officers, directors, employees, consultants, representatives, attorneys, predecessors and successors in interest, subsidiaries, affiliates, parents, divisions, joint ventures, licensees,

franchisees, assigns, members and related entities, and any other legal entities, whether foreign or domestic that are owned or controlled by Genband, and all predecessors and successors in interest to such entities, and any entity owned in whole or in part by, affiliated with, or controlled in whole or in part by Genband, as well as the agents, officers, directors, employees, consultants, representatives and attorneys of any such entities.

5. “Nortel” shall mean and refer to Nortel Networks Inc., Nortel Networks Corp., Nortel Networks Ltd., and Nortel Networks Cable Solutions, Inc., including their agents, officers, directors, employees, consultants, representatives, attorneys, predecessors and successors in interest, subsidiaries, affiliates, parents, divisions, joint ventures, licensees, franchisees, assigns, members and related entities, and any other legal entities, whether foreign or domestic that are owned or controlled by Nortel, and all predecessors and successors in interest to such entities, and any entity owned in whole or in part by, affiliated with, or controlled in whole or in part by Nortel, as well as the agents, officers, directors, employees, consultants, representatives and attorneys of any such entities.

6. “CVAS Purchase” means the acquisition, sale, and/or purchase of all (or substantially all) the assets of the Nortel Carrier VoIP and Application Solutions Business (CVAS) by Genband.

7. “CVAS Unit” means the Nortel Carrier VoIP and Application Solutions Business (CVAS), including all its assets, Products, employees, liabilities, obligations, patents, or other items.

8. The “Genband Asserted Patents” shall mean United States Patent Nos. 6,772,210 (“the ’210 Patent”), 6,791,971 (“the ’971 Patent”), 6,885,658 (“the ’658 Patent”), 6,934,279 (“the ’279 Patent”), 7,995,589 (“the ’589 Patent”), 7,047,561 (“the ’561 Patent”), 7,184,427

(“the ’427 Patent”), 7,990,984 (“the ’984 Patent”), 6,879,667 (“the ’667 Patent”), U.S. Patent No. 7,162,024 (“the ’024 Patent”), U.S. Patent No. 7,680,252 (“the ’252 Patent”), U.S. Patent No. 7,953,210 (“the ’3210 Patent”), and U.S. Patent No. 8,600,006 (“the ’006 Patent”) individually and collectively, including all underlying patent applications, continuations, continuations-in-part, divisionals, parents, progeny, reexaminations, or reissues thereof and all foreign counterpart applications and patents which claim the same subject matter.

9. The “Nortel Asserted Patents” shall mean United States Patent Nos. 6,772,210 (“the ’210 Patent”), 6,791,971 (“the ’971 Patent”), 6,885,658 (“the ’658 Patent”), 6,934,279 (“the ’279 Patent”), 7,995,589 (“the ’589 Patent”), 7,047,561 (“the ’561 Patent”), and U.S. Patent No. 8,600,006 (“the ’006 Patent”) individually and collectively, including all underlying patent applications, continuations, continuations-in-part, divisionals, parents, progeny, reexaminations, or reissues thereof and all foreign counterpart applications and patents which claim the same subject matter.

10. The terms “Nortel Related Patent” or “Nortel Asserted Patents Family Tree” means any domestic or foreign patent or patent application to, from, or through which any of the Nortel Asserted Patents claim priority; and all domestic or foreign patents and patent applications (including without limitation the Asserted Patents) that claim priority to, from, or through the aforesaid applications. This includes without limitation: (a) any continuation, continuation in part, divisional, or any other patent or patent application (including rejected, abandoned, provisional, or pending applications) derived in whole or in part from said patents or applications, and all foreign counterpart patents or patent applications (including rejected, abandoned, provisional, or pending applications); and (b) all domestic or foreign patents or

patent applications (including rejected, abandoned, provisional, or pending applications) that claim priority to or through any Nortel Asserted Patent.

11. “Nortel Transferred Patents” means all patents transferred from Nortel to Genband, including those patent listed on reel numbers: 27992-443; 24879-519; 24879-475, accessed via:

<http://assignment.uspto.gov/#/search?adv=patAssignorName%3ANortel%2BpatAssigneeName%3AGenband&sort=patAssignorEarliestExDate%20desc%2C%20id%20desc&synonyms=false>.

12. The '612 Patent shall mean U.S. Patent No. 6,937,612, entitled “Communications method and apparatus,” all underlying patent applications, all continuations, continuations-in-part, divisionals, reissues, and any other patent applications in the '612 Patent family.

13. Nortel’s Call Manager Software shall include, both collectively and individually Nortel’s Personal and Symposium Call Manager, Fastview, Fastcall, and Multimedia conferencing software (“NCM”), which are described (by reference only) in Desktop TAPI Service Provider 1.5 User’s Guide (October 1997), the Enterprise Edge Personal Call Manager User Guide (1999), and Norstar Computer Telephony Integration – Norstar Handbook (January 1999) (“Handbook”), attached as Exs. 1, 2, and 3, respectively.

14. “Zhone Products” means the AccessNode and UE9000 , including any versions of these products, or similar or related products, created prior to October 2005, as referenced in, by way of example only, Ex. 4.

15. “3GPP” shall mean the 3rd Generation Partnership Project.

16. “ATIS” shall mean the Alliance for Telecommunications Industry.

17. “CableLabs” shall mean Cable Television Laboratories, Inc.



18. “ETSI” shall mean the European Telecommunications Standards Institute.
19. “IETF” shall mean the Internet Engineering Task Force.
20. “ITU-T” shall mean the ITU Telecommunication Standardization Sector.
21. “Standards Setting Organization” or “SSO” shall mean an organization that adopts standards governing an industry or technological field, and includes without limitation 3GPP, ATIS, CableLabs, ETSI, IETF, and ITU-T.
22. “FRAND” or “RAND” may be used interchangeably and shall mean fair, reasonable, and non-discriminatory.
23. “FRAND committed” or “RAND committed” means subject to a FRAND and/or RAND commitment.
24. “Source Code” includes source code, hardware code, machine code, assembly code, or code written in any programming language, and code that can be compiled or acted upon by a processor, any listings or printouts thereof, and any release notes describing the features or modifications of such code.
25. “Executable Software” means computer files containing encoded instructions capable of being executed by a processing unit (e.g., a central processing unit or microcontroller), and any release notes describing the features or modifications of such files. The term shall include, without limitation, firmware and executable binary files.
26. “Communication(s)” shall mean, without limitation, any transmittal, conveyance or exchange of a word, statement, fact, Thing, idea, Document, instruction, information, demand, question or other information by any medium, whether by written, oral or other means, including electronic communications and electronic mail.

27. “Date(s)” shall mean the exact date(s), if known, or the closest approximation to the exact date(s) as can be specified, including without limitation the year, month, week in a month, or part of a month.

28. “Document(s)” shall be construed under the broadest possible construction under Federal Rule of Civil Procedure 34 and Federal Rule of Evidence 1001. The term shall include without limitation any written, recorded, graphic, or other matter, whether sent or received or made or used internally, however produced or reproduced and whatever the medium on which it was produced or reproduced (whether on paper, cards, charts, file, or printouts; tapes, discs, belts, video tapes, audiotapes, tape recordings, cassettes, or other types of voice recording or transcription; computer tapes, databases, e-mails; pictures, photographs, slides, films, microfilms, motion pictures; or any other medium), and any other tangible item or Thing of readable, recorded, or visual material of whatever nature including originals, drafts, and all non-identical copies of each Document (which, by reason of any variation, such as the presence of absence of hand-written notes or underlining, represents a distinct version). By way of example, the term “Document(s)” as used herein shall include: correspondence; blueprints; memoranda; notes; diaries; letters; telegraphs; telegrams; telexes; emails; metadata; minutes; agendas; contracts; reports; studies; checks; statements; receipts; returns; summaries; pamphlets; circulars; press releases; advertisements; books; inter-office and intra-office communications; handwritten or typewritten notes; notations or summaries of telephone conversations, meetings, or conferences; bulletins; computer printouts; databases; teletypes; telefax; invoices; worksheets; photographs; tape recordings; patents and patent application materials; patent appraisals; printed publications; trademark applications, certificates of registration, opinions of counsel; memoranda of agreements, assignments, licenses; reports of or summaries of either negotiations within or

without the corporation or preparations for such; and all other tangible items of readable, recorded, or visual material of any kind.

29. “Entity” shall mean corporation, company, firm, partnership, joint venture, association, governmental body or agency, or Persons other than a natural person.

30. Whenever Metaswitch asks Nortel to “identify” a date or dates, Nortel shall respond by providing the exact date(s) if known or obtainable, or the closest approximation to the exact date(s) as can be specified, including the year, month, week in a month, or part of a month or week.

31. Whenever Metaswitch asks Nortel to “identify” a natural Person, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the Person’s full name; (b) his or her present or last known home address and telephone number; (c) his or her present or last known business address and telephone number; (d) his or her present or last known title or occupation; and (e) his or her present or last known employer. When the Person in question is a current or former director, officer, manager, or other employee of Genband or Nortel, Genband’s response additionally shall include, to the extent known or obtainable, at least the following information: (a) the title(s) or position(s) held by the Person at Genband or Nortel; (b) the time periods during which he or she held those title(s) or positions(s); and (c) a description of his or her responsibilities to those title(s) or position(s).

32. Whenever Metaswitch asks Nortel to “identify” any legal entity, such as a corporation, company, firm, partnership, joint venture, association, government body or agency, or Person other than a natural Person, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the entity’s full legal name; (b) its place of

incorporation or organization; (c) its principal place of business; and (d) the nature of the business conducted by the entity.

33. Whenever Metaswitch asks Nortel to “identify” a Document, Nortel shall respond by specifying the Document in sufficient detail to enable Metaswitch to locate the Document, including by providing at least the following information: (a) the production number range; (b) the date appearing on such Document, or, if no date appears thereon, the approximate date the Document was prepared; (c) the identifying code number, file number, title, or label of such Document; (d) a general description of the nature (e.g., letter, memorandum, drawing, prototype) and subject matter of the Document; (e) the name of each Person having possession, custody, or control of such Document; (f) if the Document existed at one time but does not presently exist, the reason(s) why it no longer exists and the identity of the last Person having custody of it; and (g) if the Document is in a foreign language, whether a partial or complete English translation of the Document exists.

34. Whenever Metaswitch asks Nortel to “identify” a Communication, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the form of the Communication (e.g., telephone call, meeting, letter); (b) a summary of the substance of the Communication; (c) the date and place of the Communication; (d) a list identifying each Person who participated in or was present at, involved in, or connected with the Communication; and (e) a list identifying each Document that memorializes or refers to the Communication.

35. Whenever Metaswitch asks Nortel to “identify” a tangible Thing that is not a Document or Communication (including any Products manufactured, developed, sold, or imported by Genband), Nortel shall respond by providing, to the extent known or obtainable, at

least the following information: (a) the product name(s), product number(s), version number(s), and revision number(s); (b) the date(s) when the Thing first was introduced for sale and first was sold; and (c) all team name(s) or project title(s) used in connection with the design, development, testing, or engineering of that tangible Thing.

36. Whenever Metaswitch asks Nortel to “identify” a process, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the date the process first was used; (b) the date that Products or other objects made by the process first were sold; (c) all numbers or codes used to refer to the process, including process revision numbers or codes; (d) all process names; and (e) all team names or project titles used in connection with the design, development, testing, or engineering of that process.

37. Whenever Metaswitch asks Nortel to “describe” an act, event, instance, occasion, transaction, conversation, or Communication, Nortel shall respond by providing, to the extent known or obtainable, at least the following information: (a) the date and place thereof and of any related occurrences; (b) a list identifying the individual participants and all other knowledgeable Persons; (c) separate summaries of what each individual participant did or said; (d) a list identifying all Documents or Things used or prepared in connection therewith or making any reference thereto; and (e) any other relevant facts and related Documents or Communications.

38. “Licensee” or “License” means and includes each and every sub-licensee or sublicense, and is intended to include settlements, settlement agreements, non-assert agreements, covenants not to sue, and agreements not to sue.

39. “Person(s)” shall mean any natural person or any business, proprietorship, firm, partnership, corporation, association, organization, or other legal entity. The acts of a Person

shall include the acts of directors, officers, owners, consultants, members, employees, agents, attorneys or other representatives acting on the Person's behalf.

40. "Product(s)" shall mean any machine, manufacture, apparatus, device, software, system, instrument, mechanism, appliance, assemblage of components/parts (either individually or collectively), process, or method which are designed to function together electrically, mechanically, chemically, or otherwise, to achieve a particular function or purpose, including those offered for sale, sold, or under development.

41. "Thing(s)" shall include any tangible objects of any kind and nature other than a Document, including prototypes, models, and physical specimens thereof.

42. "Participate" shall mean, without limitation, to communicate, attend, exchange information with, engage, cooperate, observe, contact, publicize, or otherwise interact with.

43. "Refer to," "referring to," "relate to," "related to," "relating to," "regarding," or "concerning" shall mean in whole or in part constituting, containing, contradicting, embodying, commenting on, depicting, demonstrating, refuting, evidencing, representing, discussing, reflecting, describing, analyzing, identifying, mentioning, stating, summarizing, bearing upon, pertaining to, comprising, involving, alluding to, commenting on, referring directly or indirectly to, dealing with, or in any way pertaining to.

44. "Third Party" shall mean all Persons who are not parties to this Litigation, as well as their officers, directors, employees, agents and attorneys.

45. Where a Topic below names a corporation or other legal entity, the Topic includes within its scope any parent, Predecessors-in-Interest, subsidiaries, affiliates, past or present directors, officers, employees, agents, and representatives thereof, including attorneys, Consultants, accountants, and investment bankers.

46. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

47. The terms “any,” “all,” “every,” and “each” shall each mean and include the other.

48. The singular form of any word shall be deemed to include the plural. The plural form of any word shall be deemed to include the singular.

49. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

50. “Include” and “including” shall mean including without limitation.

### **INSTRUCTIONS**

The following instructions shall apply to each of the Document Requests herein:

1. You are to produce the original and each non-identical copy or draft of each Document(s), Source Code, or Thing(s) requested herein that is in Your possession, custody or control in its entirety, without abbreviation or redaction.

2. If any portion of a Document, Source Code or Thing is responsive to a request, the entire Document, Source Code or Thing should be produced including all attachments and enclosures, redacting only privileged material, if any.

3. All Documents, Source Code and Things should be produced in the same file or other organizational environment in which they are maintained in the ordinary course of business. For example, a Document that is part of a file, docket or other grouping should be physically produced together with all other Documents from said file, docket or grouping, in the same order or manner of arrangement as the original. Additionally, to the extent produced in hardcopy, each Document should be produced stapled, clipped or otherwise bound or connected

in the same manner as the original. File folders with tabs or labels or directories of files identifying Documents should be produced intact with such Documents. Documents attached to each other should not be separated.

4. Each item produced should bear unique identifying control numbers (e.g., Bates labels) on each item or page if the item is a Document.

5. Color copies of Documents are to be produced where color is necessary to interpret or understand the contents.

6. Electronic records and computerized information should be produced in their native electronic format, together with a description of the system from which they were derived sufficient to permit rendering the records and information intelligible.

7. If You believe that You are not required to provide any Document, Source Code or Thing on the grounds of a privilege or protection that You are not prepared to waive, pursuant to Federal Rule of Civil Procedure 26(b)(5), please provide a written list describing each Document, Source Code, Executable Software, or Thing not produced, using the unique identifying control numbers (e.g., Bates labels) to specify Documents or ranges where appropriate. For each item on the list, include the following:

- (i) the specific privilege asserted;
- (ii) all Persons making or receiving the Document, Source Code or Thing;
- (iii) the steps taken to ensure the confidentiality of the Document, Source Code or Thing, including affirmation that no unauthorized Persons have received the Document, Source Code or Thing;
- (iv) the date of the Document, Source Code or Thing; and
- (v) the subject matter of the Document, Source Code or Thing.



**DOCUMENTS TO BE PRODUCED**

**DOCUMENT REQUEST NO. 1:**

All Documents and Communications relating to the Nortel Asserted Patents and/or to any Related Nortel Patents.

**DOCUMENT REQUEST NO. 2:**

Documents and Communications sufficient to show Nortel's first awareness of Metaswitch (Data Connection Ltd.) and its Accused Products.

**DOCUMENT REQUEST NO. 3:**

Documents and Communications sufficient to show the corporate and legal structure, capitalization, and management of Nortel Networks Cable Solutions Inc., including its relationship with the other Nortel Networks entities, such as Nortel Networks Inc., Nortel Networks Corp., and Nortel Networks Ltd., and any common ownership, common employees, common management, common control, common or shared capitalization, intermingling of business activity, observance of corporate formalities, and payment of dividends.

**DOCUMENT REQUEST NO. 4:**

All Documents and Communications relating to licensing any of the Nortel Asserted Patents or Related Nortel Patents, including, but not limited to, all license agreements, cross licenses, covenants not to sue, or non-assertion agreements that cover any of the Nortel Asserted Patents, all offers to license any of the Nortel Asserted Patents to Genband or to any Third Party, all draft agreements, any negotiation of any agreement or royalty.

**DOCUMENT REQUEST NO. 5:**

Documents and Communications sufficient to identify every attempt by Nortel to enforce any of the Nortel Asserted Patents, Related Nortel Patents, or Transferred Patents, either in the United States or abroad.

**DOCUMENT REQUEST NO. 6:**

All Documents and Communications relating to any decision, by Nortel, Genband, or any Third Party, to file or decline to file any potential or actual litigation or other claim relating to any of the Nortel Asserted Patents, the Related Nortel Patents, or to the Transferred Patents.

**DOCUMENT REQUEST NO. 7:**

All Documents and Communications relating to any patent claim charts, infringement or invalidity evaluations, or comparisons between the Nortel Asserted Patents and any Genband, Metaswitch, or Third-Party Product.

**DOCUMENT REQUEST NO. 8:**

All Documents and Communications relating to the CVAS Purchase, including any Documents shared between Genband and Nortel as part of any due diligence; any meeting or other discussion between Genband and Nortel; the structure and formation of the CVAS Unit (including an organizational chart); any decision regarding the organization of the CVAS Unit, including how to structure its departments, employees, assets, and liabilities; and the transfer (or decision not to transfer) any aspect of the CVAS Unit and its underlying departments, employees, assets, and liabilities.

**DOCUMENT REQUEST NO. 9:**

Documents sufficient to show all Nortel employees transferred to Genband.

**DOCUMENT REQUEST NO. 10:**

All Documents and Communications relating to any government inquiry or investigation relating to the CVAS Purchase, including all Documents and Communications with or relating to the Antitrust Division of the U.S. Department of Justice or the Federal Trade Commission (“FTC”).

**DOCUMENT REQUEST NO. 11:**

All Documents and Communications relating to any bid, offer, or other proposal, whether or not that bid, offer, or other proposal was ever finalized, executed, or considered, for Nortel's CVAS Unit, the CVAS Patent Portfolio, any Nortel Asserted Patent, Nortel Related Patent, or Nortel Transferred Patent.

**DOCUMENT REQUEST NO. 12:**

All Documents and Communications relating to any confidentiality or non-disclosure agreements executed between Nortel and Genband and/or any Third Party relating to the sale, merger, acquisition, or purchase of the CVAS Unit, the Nortel Asserted Patents, the Related Nortel Patents, and/or the Nortel Transferred Patents.

**DOCUMENT REQUEST NO. 13:**

Documents sufficient to identify all Persons involved in the negotiation or authorization of the CVAS Purchase.

**DOCUMENT REQUEST NO. 14:**

All Documents and Communications relating to the decision to include or exclude any patent related to voice over internet protocol ("VoIP") technology in the patent portfolio in the CVAS purchase or to any other sale of Nortel intellectual property from 2009-2011.

**DOCUMENT REQUEST NO. 15:**

All Communications with Genband relating to any Nortel Asserted Patent, Related Nortel Patent, Transferred Nortel Patent, to this Action, or to Metaswitch.

**DOCUMENT REQUEST NO. 16:**

All Documents and Communications relating to the value of any Nortel Asserted Patent, Transferred Nortel Patent, or Related Nortel Patent, including any valuation performed by Nortel, Genband, and/or a Third Party.

**DOCUMENT REQUEST NO. 17:**

All Documents and Communications relating to any efforts You made to license, sell, monetize, or otherwise generate revenue from Nortel's Asserted Patents or Transferred Nortel Patents, including but not limited to any presentations, meeting minutes, license negotiations, sales negotiations, claim charts, infringement analyses, validity analyses, notice letters, cease and desist letters, offers, draft license agreements, and term sheets.

**DOCUMENT REQUEST NO. 18:**

All Documents and Communications relating to the sales, revenue, income, profit, gross margin, costs, expenses, forecasts, projections, or budgets for any Nortel Product or service that relates to or resulted in any claim of the Nortel Asserted Patents or the Related Nortel Patents.

**DOCUMENT REQUEST NO. 19:**

All Documents and Communications relating to the filing and prosecution of the Nortel Asserted Patents or Related Nortel Patents, including but not limited to all draft and final versions of such applications, office actions, draft and final versions of responses to office actions.

**DOCUMENT REQUEST NO. 20:**

All Documents and Communications relating to the Nortel Asserted Patents or Related Nortel Patents, submitted to the U.S. Patent & Trademark Office or patent office of another

jurisdiction during the prosecution of any of the Nortel Asserted Patents or Related Nortel Patents.

**DOCUMENT REQUEST NO. 21:**

All Documents and Communications related to the '612 Patent.

**DOCUMENT REQUEST NO. 22:**

Documents and Communications related to a generic service framework ("GSF") for the DMS-100, digital multiplex switching device, or related service.

**DOCUMENT REQUEST NO. 23:**

Documents and Communications sufficient to identify, by build or version name or number, all Products used or sold prior to June 7, 1999 related to any GSF efforts, including any user guides, marketing, advertising, or promotional efforts relating to the same.

**DOCUMENT REQUEST NO. 24:**

Documents and Communications sufficient to show the time period during which each Product used or sold prior to June 7, 1999 relating to any GSF efforts was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 25:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to June 7, 1999 relating to any GSF efforts.

**DOCUMENT REQUEST NO. 26:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to March 13, 2000 relating to Nortel's Call Manager

Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 27:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to March 13, 2000 relating to Nortel's Call Manager Software.

**DOCUMENT REQUEST NO. 28:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Call Manager Software used or sold prior to March 13, 2000, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 29:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to October 2005 relating to the Zhone Products was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 30:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of the Zhone Products used or sold prior to October 2005, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 31:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to October 2005 relating to the Zhone Products.

**DOCUMENT REQUEST NO. 32:**

Documents and Communications sufficient to show the technical operation or use of any functionality related to the ability to connect calls between subscribers connected to any of the Zhone Products, whether or not the Zhone Products are operating in emergency stand alone feature (for example, as referenced in Exhibit 4), included in any Products (including software) created or sold by prior to October 2005.

**DOCUMENT REQUEST NO. 33:**

Documents and Communications sufficient to show the technical operation or use of any functionality related to emergency stand alone feature (for example, as referenced in Exhibit 4) in any of the Zhone Products, included in any Products (including software) created or sold by You prior to October 2005.

**DOCUMENT REQUEST NO. 34:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Border Control Point Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 35:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Border Control Point Software.

**DOCUMENT REQUEST NO. 36:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Border Control Point Software used or sold prior to December 27, 2006, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 37:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Communication Server 2000 (CS 2000) Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 38:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Communication Server 2000 (CS 2000) Software.

**DOCUMENT REQUEST NO. 39:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Communication Server 2000 (CS 2000) Software used or sold prior to December 27, 2006, including Documents and Communications relating to any



marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 40:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Communication Server 1500 (CS 1500) Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 41:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Communication Server 1500 (CS 1500) Software.

**DOCUMENT REQUEST NO. 42:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Communication Server 1500 (CS 1500) Software used or sold prior to December 27, 2006, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 43:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Universal Signaling Point Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 44:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Universal Signaling Point Software.

**DOCUMENT REQUEST NO. 45:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Universal Signaling Point Software used or sold prior to December 27, 2006, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 46:**

Documents and Communications sufficient to show the time period during which each feature or product used or sold prior to December 27, 2006 relating to Nortel's Media Gateway 9000 Software was sold, licensed, or made available in the United States and the quantity sold, licensed, or made available in the United States.

**DOCUMENT REQUEST NO. 47:**

Documents and Communications sufficient to identify any Persons knowledgeable about the creation, design, development, operation or implementation of any feature or product used or sold prior to December 27, 2006 relating to Nortel's Media Gateway 9000 Software.

**DOCUMENT REQUEST NO. 48:**

Documents and Communications sufficient to identify, by build or version name or number, all versions of Nortel's Media Gateway 9000 Software used or sold prior to December 27, 2006, including Documents and Communications relating to any marketing, advertising, or promotional efforts.

**DOCUMENT REQUEST NO. 49:**

Documents or Communications sufficient to show the technical operation or use of any functionality related to an emergency stand alone feature in any of the Your products—including in any media gateways, softswitches, or gatekeepers—including software, created or sold by You prior to October 2005.

**DOCUMENT REQUEST NO. 50:**

Documents and Communications sufficient to show the membership and participation of Nortel in any SSO, including without limitation 3GPP, ATIS, CableLabs, ETSI, IETF, and ITU-T.

**DOCUMENT REQUEST NO. 51:**

Documents and Communications sufficient to show any agreements, declarations, licenses, or other rights in the Nortel Asserted Patents, the Related Nortel Patents, or the Transferred Patents given to any SSO or its members, including without limitation 3GPP, ATIS, CableLabs, ETSI, IETF, and ITU-T.

**DOCUMENT REQUEST NO. 52:**

Documents and Communications sufficient to show Nortel's involvement or participation in the CableLabs PacketCable and/or DOCSIS standards, including access to CableLabs (or its members') information, equipment, or facilities, attendance at CableLabs meetings, submissions or contributions to CableLabs specifications, first access or receipt of CableLabs specifications, and legal agreements or licenses with CableLabs (or its members) relating to or resulting from Nortel's participation in the CableLabs PacketCable and/or DOCSIS standards.

**DOCUMENT REQUEST NO. 53:**

All Documents and Communications relating to any FRAND royalty rate for the Nortel Asserted Patents, the Related Nortel Patents, or the Transferred Patents.

# **Tab 3**

**AGREEMENT BETWEEN METASWITCH AND NORTEL NETWORKS INC.**

Metaswitch Networks Corp. and Metaswitch Networks Ltd (collectively, “Metaswitch”) and Nortel Networks Inc. (“NNI”) enter into the following Agreement governing NNI’s response to discovery requests issued in *GENBAND US LLC v. Metaswitch Networks Corp.*, Case No. 14-cv-33 (E.D. Tex.) and *Metaswitch Networks Ltd. v. GENBAND US LLC*, Case No. 14-cv-744 (E.D. Tex) (hereafter “Genband Litigation”). Metaswitch and NNI shall be referred to as “the Parties.” For purposes of clarity, NNI does not include any other Nortel entities, including Nortel Networks Corp.

**FUTURE MODIFICATIONS**

This Agreement is intended to supplement a Third Discovery Protocol, in the form attached as Schedule B hereto, that NNI is seeking to have adopted by the U.S. Bankruptcy Court for the District of Delaware in *In re Nortel Networks Inc., et al.*, Case No. 09-10138(KG) (“Nortel Bankruptcy Proceeding”). To the extent that the Delaware Bankruptcy Court enters an order inconsistent with NNI’s proposal for a Third Discovery Protocol, the Parties will meet and confer to discuss any necessary modifications to the Agreement.

**DOCUMENT REPOSITORIES**

With reference to the document repositories identified in the Second Discovery Protocol adopted in the Delaware Bankruptcy Proceeding (Dkt. No. 14906-1), the Parties agree that NNI shall only be required to search the following document repositories in accordance with the procedures set forth herein, including the cost-sharing/allocation provisions: Cleared Allocation Trial Documents, the Allocation Litigation Database, the Unproduced Allocation Litigation Documents, the Allocation Laptop Data, the set of deposition transcripts created in the Allocation Litigation, the LiveLink Database, and the Electronic Data Room. NNI agrees to consider any future request by Metaswitch that NNI also search the online catalog for the Iron

Mountain Physical Items for references to potentially responsive documents. NNI represents that it is not aware of any other document repository in its possession, custody or control that is reasonably likely to contain responsive, non-duplicative documents. If any such repository becomes known to NNI during the term of this agreement, it will identify such repository to Metaswitch, and the Parties will meet and confer as to any appropriate search.

### **Cleared Allocation Trial Documents**

On or before April 15, 2015, NNI shall produce the Cleared Allocation Trial Documents to Metaswitch.

The Cleared Allocation Trial Documents shall be treated by the Parties as protected material, consistent with the protective orders entered in the Genband Litigation. All such documents shall be given the “RESTRICTED - OUTSIDE ATTORNEYS’ EYES ONLY” designation until such time, if any, as those documents become part of the public trial record or are otherwise de-designated.

In the event Metaswitch reasonably determines after review that one or more of the produced Cleared Allocation Trial Documents contains redacted information that is likely relevant to the issues in the Genband Litigation, Metaswitch may request that NNI produce specified Cleared Allocation Trial Documents in unredacted form. The Parties shall meet and confer as to the appropriate method for production, including resolution of any third-party confidentiality issues.

With respect to any of the approximately 390 trial exhibits that were withheld from the Cleared Allocation Trial Documents as potentially privileged, NNI shall run an agreed set of search terms against those exhibits to determine whether any of them are responsive to Metaswitch’s subpoenas to NNI served on March 3, 2015. If they are not responsive, no further action need be taken. If one or more exhibits are responsive, the Parties shall meet and confer as

to the appropriate method for production, including resolution of any third-party confidentiality issues.

### **Electronic Data Rooms (“EDRs”)**

As to the hard drives containing copies of the electronic data rooms (“EDRs”) made available to bidders in connection with various Nortel asset auctions, the Parties agree that NNI shall only search the copy of the EDR relating to the sale of Nortel’s Carrier VoIP and Application Solution (“CVAS”) business. NNI will provide Metaswitch a printout of the index of that EDR.

### **Iron Mountain Physical Items**

Although is not required to search for responsive documents that may be stored with Iron Mountain, NNI will, at NNI’s option, either (i) make the online catalog of the Iron Mountain Physical Items available to Metaswitch for purposes of determining whether potentially responsive documents may be identified, or (ii) run searches of the online catalog using keywords to be provided by Metaswitch.

### **DOCUMENT SEARCH, REVIEW, AND PRODUCTION**

The expenses for the referenced activities may be allocated among NNI, Metaswitch, Genband, or any other third-party, in accordance with any agreement of the participating parties or an order of the Delaware Bankruptcy Court. This agreement furthermore does not serve to restrict or otherwise prejudice NNI’s rights with respect to seeking to apportion among the various Nortel estates any costs incurred by NNI in responding to the discovery requests from the Genband Litigation.

NNI shall provide, at NNI’s expense, Metaswitch with the number of documents (the “Hit Counts”) returned by a search of the Data Repositories using the Identified Search Terms, attached as Schedule A, as well as for subsequent modifications thereto. In addition, Metaswitch



and NNI shall meet and confer in good faith to modify any search terms. Metaswitch may propose a reasonable number of modified terms to be run against the Data Repositories for purposes of constructing optimal search terms that return a reasonable number of hits, including after a production is made. If the Parties cannot reach agreement, they may bring the dispute before the Discovery Mediator (discussed below).

Once Metaswitch and NNI agree on a set of search terms, NNI will run the ESI Searches in the selected repositories to identify a collection of responsive documents, after which an electronic privilege filter will be run against the responsive documents in order to produce a collection of “Responsive/Non-Privileged Documents.” The electronic privilege filters applied to the collection of responsive documents shall be developed in consultation with Metaswitch.

To the extent NNI intends to seek reimbursement of some or all of the costs associated with performing the ESI Searches and electronic privilege filter, NNI will provide the Metaswitch with an estimate of the expense required to perform these activities before undertaking any of these steps. The expense for these activities may be allocated in accordance with a cost sharing procedure, to be agreed upon. With respect to potentially privileged documents identified by the electronic privilege filter, NNI shall prepare and serve an electronically generated privilege log. NNI and Metaswitch shall meet and confer on the data to be provided by the electronically generated privilege log (*e.g.*, custodian, To, From, Cc, Bcc, Date, Subject, and privilege filter terms “hit” by the document). NNI shall not be obligated to undertake a document-by-document review of these presumptively privileged documents as an initial matter, but NNI shall provide reasonable cooperation with respect to confirming the privileged status of any documents challenged by Metaswitch. To the extent NNI intends to seek reimbursement of some or all of the costs associated with preparation of the privilege log and/or

performing any privilege review, NNI will provide Metaswitch with an estimate of the expense before performing these activities. The expense for NNI's efforts in preparation of the privilege log, performing any privilege review, and/or addressing any challenges may be allocated in accordance with a cost sharing procedure, to be agreed upon.

NNI shall have clawback rights that comport with the protections afforded by Federal Rule of Evidence 502(b) and Federal Rule of Civil Procedure 26(b)(5)(B).

### **DISCOVERY MEDIATOR**

Karen Keller of Shaw Keller LLP shall serve as Discovery Mediator, in accordance with the terms of the Retainer Agreement submitted to the Delaware Bankruptcy Court on January 22, 2015. (*In re Nortel Networks Inc., et al.*, Case No. 09-10138 (KG), Dkt. No. 15082-1).

Metaswitch shall sign onto the Retainer Agreement before being entitled to receive any discovery pursuant to this Agreement or the Third Discovery Protocol.

### **WRITTEN DEPOSITION**

NNI agrees to respond to written deposition and/or provide a written declaration/affidavit limited to establishing produced documents as authentic and/or having been produced from NNI's business records.

### **TERMINATION**

This Agreement shall terminate upon final resolution of the Genband Litigation.

EXECUTED by the Parties

Nortel Networks Inc.

Metaswitch Networks Ltd and Metaswitch  
Networks Corp.

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule A**

**COMMON SEARCH TERMS**

1. CVAS OR “Carrier VoIP and Application Solution” or Paragon.
2. “General Bandwidth” or GENBAND
3. “stalking horse”
4. “Antitrust” or DOJ or “Department of Justice” or “Federal Trade Commission” or “FTC”
5. “David Walsh” or McCready or Jarzemsky
6. 6,772,210 or “’210 Patent” or 6,791,971 or “’971 Patent” or 6,885,658 or “’658 Patent” or 6,934,279 “’279 Patent” or 7,995,589 or “the ’589 Patent” or 7,047,561 or “’561 Patent” or 6,879,667 “’667 Patent” or 7,162,024 “’024 Patent” or 7,680,252 or “the ’252 Patent” or 7,953,210 and U.S. Patent No. 8,600,006 “’006 Patent” or 27992-443 or 24879-519 or 24879-475
7. (valu\* or evalu\* or analy\* or residu\* or target\* or enforce\* or assert\* or royalt\* or monetize\*) and (“IP” or “intellectual property” or patent or portfolio or bucket or sale or assign\* or notice or infringe\* or “claim chart” or litig\*)
8. “licens\*” or cross-licens\* or “cross licens\*” or crosslicens\* or sublicens\* or “sub-licens\*”
9. 6,937,612 or “’612 Patent”
10. “Symposium” or “Fastview” or “Fastcall” or “Multimedia” or “enterprise edge” or “call manager”
11. AccessNode or UE9000
12. IETF or IEEE or ITU or 3GPP or ATIS or ETSI or W3C or TIA or “Multiservice Switching Forum” or MSF or “broadband forum” or CableLabs or “Cable Labs” or PacketCable or “Packet Cable” or DOCSIS or “standard-essential” or “standard essential” or SEP or F/RAND or FRAND or RAND or “royalty-free” or “royalty free”
13. \*metaswitch\* or meta\* or “Data Connection Ltd” or “Data Connection” or \*dataconnection\*
14. “Nortel Networks Cable Solutions” or rapporteur\*
15. “emergency stand alone” or “Emergency standalone” or “emergency stand-alone” or “ESA”
16. “Media Gateway 9000” or “MG9000”

17. “Universal Signaling Point” or “USP”
18. Communication Server 1500 or CS 1500 or CS1500
19. Communication Server 2000 or CS 2000 or CS2000
20. “Border Control Point” or “BCP”
21. GSF or “generic service framework”
22. Auction and (patent\* or portfolio)
23. “Inequitable conduct” or “prior art”
24. Laches or estoppel or “time bar”
25. “11718 BA” or 11718BA or “10610 RN” or 10610RN or “11694 RO” or 11694RO or “11854 RR” or 11854RR
26. Perimeta\* or Metasphere or “call feature server” or CFS or VP2510 or VP3500 or VP3510 or VP6010 or VP6050 or MG2510 or MG3510 or MG6010 or MG6050) or MTAS or Accession or CommPortal.

# **Tab 4**



**Service of Process  
Transmittal**

12/09/2014

CT Log Number 526209563

**TO:** Timothy Ross  
Nortel Networks, Inc.  
4001 Chapel Hill Nelson Hwy  
Research Triangle Park, NC 27709-0019

**RE: Process Served in Delaware**

**FOR:** Nortel Networks, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** RE: Innovative Wireless Solutions LLC, Pltf. // To: Aruba Networks Inc., Dft. // To: Nortel Networks Inc.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Subpoena, Proof of Service, Attachment(s), Schedule, Instructions

**COURT/AGENCY:** Delaware District - U.S. District Court, DE  
Case # 113CV01858RGA

**NATURE OF ACTION:** Subpoena - Business records - Pertaining to Any and all documents, including Communications, that related to the IWS Patents (See documents for additional requests)

**ON WHOM PROCESS WAS SERVED:** The Corporation Trust Company, Wilmington, DE

**DATE AND HOUR OF SERVICE:** By Process Server on 12/09/2014 at 15:50

**JURISDICTION SERVED :** Delaware

**APPEARANCE OR ANSWER DUE:** 12/22/2014 at 9:00 a.m. (Document(s) may contain additional answer dates)

**ATTORNEY(S) / SENDER(S):** Jeffrey S. Pollack  
Duane Morris LLP  
30 South 17th Street  
Philadelphia, PA 19103  
215-979-1299

**REMARKS:** The documents received have been modified to reflect the name of the entity being served.

**ACTION ITEMS:** CT has retained the current log, Retain Date: 12/10/2014, Expected Purge Date: 12/15/2014  
Image SOP  
Email Notification, Timothy Ross Tim.Ross@nortel-us.com

**SIGNED:** The Corporation Trust Company

**ADDRESS:** 1209 Orange Street  
Wilmington, DE 19801

**TELEPHONE:** 302-658-7581



**Service of Process  
Transmittal**

12/09/2014

CT Log Number 526209563

**TO:** Timothy Ross  
Nortel Networks, Inc.  
4001 Chapel Hill Nelson Hwy  
Research Triangle Park, NC 27709-0019

**RE: Process Served in Delaware**

**FOR:** Nortel Networks, Inc. (Domestic State: DE)

**DOCKET HISTORY:**

<b>DOCUMENT(S) SERVED:</b>	<b>DATE AND HOUR OF SERVICE:</b>	<b>TO:</b>	<b>CT LOG NUMBER:</b>
Attachment(s), Subpoena, Proof of Service, Schedule. Instructions	By Process Server on 12/04/2014 at 13:20	Timothy Ross Nortel Networks, Inc.	526182953

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Delaware

*Innovative Wireless Solutions LLC v. Aruba Networks Inc.*, No. 1:13-cv-01858-RGA; *Innovative Wireless Solutions LLC v. Belkin International, Inc.*, No. 1:13-cv-01859-RGA; *Innovative Wireless Solutions LLC v. Motorola Solutions Inc.*, No. 1:13-cv-01864-RGA; *Innovative Wireless Solutions LLC v. NETGEAR, Inc.*, No. 1:13-cv-01865-RGA

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Nortel Networks Inc., c/o The Corporation Trust Company  
Corporation Trust Center 1209 Orange St., Wilmington, DE 19801

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Schedule A

Place: Duane Morris LLP 222 Delaware Ave., Ste 1600 Wilmington, DE 19801-1659	Date and Time:  12/22/2014 9:00 am
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/03/2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

*Jeffrey Pollack*  
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) \_\_\_\_\_  
Aruba Networks, Inc., Netgear Inc., and Belkin International, Inc., who issues or requests this subpoena, are:

Jeffrey S. Pollack, Duane Morris LLP, 30 South 17th Street, Philadelphia, PA 19103  
JSPollack@duanemorris.com (215)979-1299

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:13-CV-01858

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for (name of individual and title, if any) \_\_\_\_\_  
on (date) \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on (date) \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 3)

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**

**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## **SCHEDULE A**

### **DEFINITIONS**

1. "Nortel Networks Inc.", "you" or "your" shall mean Nortel Networks Inc., and any and all other predecessors-in-interest and successors-in-interest to Nortel Networks Inc., including all of their corporate locations, and all predecessors, successors, subsidiaries, parents and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership relationships with them, and others acting on their behalf.
2. "IWS" shall mean Innovative Wireless Services, Inc., and all predecessors-in-interest, successors-in interest, subsidiaries, parents and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership relationships with them, and others acting on their behalf in any location.
3. "Inventors" or "listed inventors" refers to any of the listed inventors on any of the IWS Patents, including John Brian Terry and Roger St. Patrick Richards.
4. "IWS Patents" shall refer to U.S. Patent No. 5,912,895, U.S. Patent No. 6,327,264, and U.S. Patent No. 6,587,473, and any Related Patents thereto.
5. "Related Patent" shall mean any patent or patent application, foreign or U.S., individually and collectively, that (i) claims priority from any IWS Patent, (ii) is identified as priority for any IWS Patent, (iii) claims priority to any application to which any IWS Patent claims priority, (iv) is listed within the "Related U.S. Application Data" section of any IWS Patent, or (v) discloses or claims substantially the same Subject Matter as any IWS Patent, and includes all parents, progeny, provisional and nonprovisional applications, continuations, continuations-in-part, divisionals, reexaminations, reviews, reissues, or foreign counterparts thereof.
6. "Nortel Affiliate" shall mean a corporation or company which directly or indirectly controls, or is under common control with, or is controlled by, Nortel Networks Limited, Nortel Networks, Inc., or Nortel Networks Corp. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of the subject person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).
7. "Nortel Subsidiary" shall mean a company in which Nortel Networks Limited, Nortel Networks, Inc., or Nortel Networks Corp. effectively owns or controls, directly or indirectly, more than fifty percent (50%) of the voting stock or ownership interest therein.

8. "Accused Defendants" shall mean Cisco Systems, Inc., Ruckus Wireless, Inc., ADTRAN, Inc., ARRIS Group, Inc., ARRIS Enterprises, Inc., General Instrument Corp., Aruba Networks Inc., Belkin International Inc., Engenius Technologies, Inc., Senao Networks, Inc., Motorola Solutions, Inc., Netgear, Inc., SMC Networks, Inc., Ubiquiti Networks, Inc., and Zoom Telephonics, Inc., Zyxel Communications, Inc., TP-Link USA Corporation, Trendnet, Inc., Compex, Inc., Hawking Technologies, Inc., and D-Link Systems, Inc.
9. "Prior Art" includes any reference or subject matter set forth in or relevant under 35 U.S.C. §§ 102 and/or 103.
10. "Person" shall mean and refer to any natural person or any business, proprietorship, firm, partnership, corporation, association, organization, or other entity.
11. "Document" shall be given the broadest meaning accorded that term by the Federal Rules of Civil Procedure 34(a) and includes, but is not limited to, all of the items defined in Federal Rule of Evidence 1001, all non-identical copies, all preliminary and final drafts of any such item, and all electronically stored information.
12. "Communication(s)" shall mean and refer to any transmission of information in any context or situation by or between two or more Persons by any means or medium whatsoever, whether in the form of an original, a draft, or a copy, whether stored in hard copy, electronically or digitally, or on tape, either orally or in writing, including conversations, correspondence, electronic mails, telexes, facsimile transmissions, telecopies, recordings in any medium of oral, written, or typed communications, telephone or message logs, notes or memoranda Relating to written or oral communications, and any translation thereof.
13. "Thing" shall mean and refer to any physical specimen or tangible item in Your possession, custody or control, including research and development samples, prototypes, productions samples and the like.
14. "Referring to," "relating to," "related to," "concerning," "referencing" or "regarding" are used in their broadest possible sense and include all matters comprising, constituting, containing, concerning, embodying, reflecting, involving, discussing, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, for each request whichever definition makes the request most inclusive.
15. The use of a verb in any tense shall be construed as use of the verb in all other tenses.
16. The term "including" shall be without limitation.
17. The terms "and" and "or" shall be both conjunctive and disjunctive and the terms "each" and "any" shall mean and refer to any and all.

### **INSTRUCTIONS**

1. You are to produce all requested documents which are in your possession, custody or control, or which are within the possession, custody or control of your legal counsel, agents, other representatives, or all other persons acting on your behalf. In the event that you cannot produce all of the documents designated in particular request, you shall produce those documents or portions of documents that you can produce and describe in detail each reason for your failure or inability to produce each of the remaining documents or portions thereof.
2. You are to produce all responsive Documents and Things in the manner they are normally kept.
3. You shall produce the original of any document requested. Each non-identical version of any document shall constitute a separate document. Each draft or version of any document shall also constitute a separate document.
4. Do not separate attachments from documents.
5. In the event that you do not produce any document because of a claim of confidentiality, privilege, or any other protection from production including, but not limited to, the attorney-client privilege or the attorney work-product doctrine, your response shall state the following information regarding the document in sufficient detail and with sufficient particularity to enable a court to adjudicate the validity of such claim:
  - a. Which privilege or protection is claimed;
  - b. The author of the document;
  - c. The general subject matter of the document; and
  - d. The addresses and persons to whom the document or any copies thereof were sent.
6. In answering a request, the use of a plural term shall be read as singular and *vice versa*.

### **REQUESTS FOR PRODUCTION**

1. Documents, including Communications, that relate to the IWS Patents.
2. Documents and Communications with, or that concern, any named Inventor of the IWS Patents.
3. Documents and Communications with, or that concern, Robert Westerlund and the IWS Patents.
4. Documents and Communications related to any license, attempt to license, and/or license negotiation for any of the IWS Patents.

5. Documents and Communications related to any transfer, grant, conveyance, or assignment of any interest in or right under the IWS Patents, including but not limited to any contracts, agreements, understandings, notes, memoranda, letters, e-mails, messages, facsimiles, telecopies, and other correspondence as well as any enclosures or attachments. This request includes but is not limited to:
  - a. Documents and Communications related to the Patent Transfer and License Agreement between Nortel Networks Inc. and Elastic Networks Inc., executed on or around May 12, 1999, and all related exhibits and agreements incorporated by reference thereto.
  - b. Documents and Communications related to the Intellectual Property Transfer and License Agreement between Nortel Networks Corporation and Elastic Networks Inc., executed on or around May 12, 1999, and all related exhibits and agreements incorporated by reference thereto.
6. Documents, including Communications, that relate to any investigation and/or product information of 802.3 or 802.11 compliant products that are or were made, sold, offered for sale, imported or licensed by any of the Accused Defendants.
7. Documents and Communications that relate to any investigation and/or evaluation regarding the valuation, validity, patentability, enforceability, scope and/or infringement of the IWS Patents, including any investigation and/or evaluation regarding any Prior Art to the IWS patents.
8. Documents sufficient to identify (i) any products made, sold, or offered for sale by You that practice the invention claimed by any of the IWS Patents, including, without limitation, Etherloop products, and (ii) whether such products were marked with the IWS Patents.
9. Documents sufficient to identify any products made, sold, or offered for sale by You that were marked with the IWS Patents.
10. Documents sufficient to show the: (i) gross and net revenues; (ii) costs of goods sold; (iii) gross and net profits; and (iv) number of units sold for each product made, sold, or offered for sale by You that practice the invention claimed by any of the IWS Patents or that were marked with the IWS Patents.
11. Documents and Communications related to Your involvement in the Institute of Electrical and Electronics Engineers ("IEEE"), including Your involvement with the development of the 802.3 and 802.11 standards and any letters of assurance, RAND commitments, intellectual property rights, patents, pending patent applications, or other documents submitted or disclosed by You or the named Inventors to the IEEE.
12. Documents and Communications relating to the preparation, filing and/or prosecution of each of the IWS Patents, any foreign counterpart patents or patent applications to the IWS Patents, including but not limited to:

- a. the prosecution file(s);
  - b. any initial or preliminary drafts patent application(s);
  - c. official actions, responses, and references cited during prosecution of the patent application(s);
  - d. drafts of any declarations or other documents submitted to the PTO during the prosecution of the patent application(s);
  - e. patents, publications, or other prior art that was cited, referred to, or relied upon during the prosecution of the patent application(s); and
  - f. communications or correspondence with the PTO during the prosecution of the patent application(s).
13. Documents, Things, and Communications concerning prior art to the IWS Patents known to You and/or the named Inventors on or after the time of the filing of the applications for the IWS Patents.
  14. Documents and Communications identified at any time to You and/or the named Inventors as potentially or allegedly rendering the IWS Patents unenforceable.
  15. Documents and Communications relating to any decision as to what prior art references or other material information to cite, or not cite, including all prior art search results, during prosecution of the IWS Patents.
  16. Documents relating to any communication, meeting or contact with the USPTO or any foreign patent office concerning any of the IWS Patents, or any foreign counterpart patents or patent applications to the Asserted Patents, including, without limitation, any internal filing/no-filing review relating to such patents or patent applications.
  17. Documents, Things, and Communications relating to the first offer for sale, initial manufacture, initial use, initial sale, initial public use, initial shipment, initial announcement, or initial disclosure of a product embodying any claim of the IWS Patents.
  18. Documents, Things, and Communications relating to the first public disclosure or publication of the subject matter of any claim of any of the IWS Patents, including, without limitation, any pre-filing date sales, offers for sale, public uses, demonstrations, announcements, advertisements, correspondence with potential customers, or publications.
  19. Documents, Things, and Communications produced by You in any other litigations or legal proceedings involving the IWS Patents.
  20. Documents and Communications concerning any litigation, arbitration or any other dispute resolution process regarding the IWS Patents, including but not limited to any correspondence or communications regarding such matters with any third party or any of the named Inventors.
  21. Documents sufficient to show the corporate relationship between Nortel Networks Limited, Nortel Networks, Inc., Nortel Networks Corp., and NETGEAR, Inc. (including

the percentage of direct or indirect ownership interest by Nortel Networks Limited, Nortel Networks, Inc., and/or Nortel Networks Corp. of NETGEAR, Inc.) throughout the period from January 1, 1999 to December 31, 2001.

22. Documents sufficient to show the extent to which NETGEAR, Inc. was a Nortel Affiliate or Nortel Subsidiary throughout the period from January 1, 1999 to December 31, 2001.



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

	X	
<i>In re</i>	:	Chapter 11
	:	
Nortel Networks Inc., <i>et al.</i> , <sup>1</sup>	:	Case No. 09-10138(KG)
	:	Jointly Administered
	:	
Debtors.	:	Hearing Date: May 5, 2015, at 10:00 a.m. (ET)
	:	Objections Due: April 28, 2015, at 4:00 p.m. (ET)
	:	
	X	

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF THIRD DISCOVERY PROTOCOL  
IMPLEMENTING THE COURT'S PREVIOUS ORDERS EXTENDING AUTOMATIC  
STAY AND REGULATING THIRD-PARTY DISCOVERY**

PLEASE TAKE NOTICE that the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned case, have today filed the **Debtors' Motion for Entry of Third Discovery Protocol Implementing the Court's Previous Orders Extending Automatic Stay and Regulating Third-Party Discovery** (the "Motion").<sup>2</sup>

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order approving the Motion must file a response or objection ("Objection") to the Motion with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **April 28, 2015 at 4:00 PM (ET)** (the "Objection Deadline").

At the same time, you must serve such Objection on the undersigned counsel for the Debtors so as to be received by the Objection Deadline.

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<sup>1</sup> 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). Contact information for the U.S. Debtors and their petitions are available at <http://dm.epiq11.com/nortel>.

<sup>2</sup> A copy of the Motion is available for download from the website of the Debtors' claims and noticing agent, Epiq Bankruptcy Solutions, LLC ("Epiq") at <http://dm.epiq11.com/NNI/Docket> or upon telephonic or email request to Epiq at (646) 282-2400 or [Nortel@epiqsystems.com](mailto:Nortel@epiqsystems.com).

**PLEASE TAKE FURTHER NOTICE** that a Hearing on the Motion will be held on **May 5, 2015**, at 10:00 a.m. (ET), before the Honorable Kevin Gross at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th floor, Courtroom #3, Wilmington, Delaware 19801. Only parties who have filed a timely objection will be heard at the hearing.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION.

Respectfully submitted,

Dated: April 8, 2015

CROWELL & MORING LLP  
Mark D. Plevin (admitted *pro hac vice*)  
Mark M. Supko (admitted *pro hac vice*)  
1001 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
Telephone: (202) 624-2500  
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– and –

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP

/s/ Jennifer R. Hoover

Jennifer R. Hoover (No. 5111)  
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*Counsel for Debtors and Debtors in Possession*