NextWave Wireless Inc.
Form 10-Q
August 06, 2009

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

x	**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
	For the quarterly period ended June 27, 2009
	OR
o	**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
	For the transition period from to

Commission file number 000-51958

NEXTWAVE WIRELESS INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**20-5361360** (IRS Employer Identification No.)
10350 Science Center Drive, Suite 210, San Diego, California (Address of principal executive offices)	**92121** (Zip Code)

(858) 480-3100

(Registrant’s telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act.

Large accelerated filer o	Accelerated filer x	Non-accelerated filer o	Smaller reporting company o
	(Do not check if a smaller reporting company)		

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No x

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13, or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes x No o

As of July 31, 2009, there were 105,125,777 shares of the Registrant’s common stock outstanding.

TABLE OF CONTENTS

PART I. FINANCIAL INFORMATION

ITEM 1. Financial Statements

NEXTWAVE WIRELESS INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands, except par value data)

(unaudited)

	June 27, 2009	December 27, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 17,176	$ 60,848
Restricted cash and marketable securities	25,243	24,870
Accounts receivable, net of allowance for doubtful accounts of $31 and $95 at June 27, 2009 and December 27, 2008, respectively	5,478	4,530
Wireless spectrum licenses held for sale	113,063	112,741
Deferred contract costs, prepaid expenses and other current assets	4,092	5,734
Current assets of discontinued operations	18,696	24,726
Total current assets	183,748	233,449
Wireless spectrum licenses, net	417,797	442,415
Goodwill	38,662	38,662
Other intangible assets, net	16,612	18,933
Property and equipment, net	3,199	4,206
Other assets, including assets measured at fair value of $1,862 and $4,210 at June 27, 2009 and December 27, 2008, respectively	14,046	19,845
Total assets	$ 674,064	$ 757,510
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 2,304	$ 7,417
Accrued expenses	22,234	24,887
Current portion of long-term obligations	138,563	136,567
Deferred revenue	17,417	17,378
Other current liabilities	1,044	1,890
Current liabilities of discontinued operations	20,708	24,094
Total current liabilities	202,270	212,233
Deferred income tax liabilities	89,605	89,062
Long-term obligations, net of current portion	553,781	496,297
Other liabilities	16,592	16,034
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock, $0.001 par value; 25,000 shares authorized; 355 shares designated as Series A Senior Convertible Preferred Stock; no other shares issued or outstanding	—	—
Common stock, $0.001 par value; 400,000 shares authorized; 103,092 shares issued and outstanding at June 27, 2009 and December 27, 2008	103	103
Additional paid-in-capital	843,584	838,865
Accumulated other comprehensive income	6,134	5,255

Accumulated deficit	(1,038,005)	(900,339)
Total stockholders’ deficit	(188,184)	(56,116)
Total liabilities and stockholders’ deficit	$ 674,064	$ 757,510

The accompanying notes are an integral part of these condensed consolidated financial statements.

NEXTWAVE WIRELESS INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share data)

(unaudited)

	Three Months Ended		Six Months Ended	
	June 27, 2009	June 28, 2008	June 27, 2009	June 28, 2008
Revenues	$ 12,035	$ 16,563	$ 28,950	$ 31,113
Operating expenses:				
Cost of revenues	5,512	5,125	11,720	9,754
Engineering, research and development	5,571	6,965	11,666	13,109
Sales and marketing	2,206	3,275	5,040	7,774
General and administrative	14,560	17,883	27,337	38,930
Asset impairment charges	83	—	16,286	—
Restructuring charges (credits)	(710)	123	2,048	123
Total operating expenses	27,222	33,371	74,097	69,690
Gain on sale of wireless spectrum licenses	668	—	671	—
Loss from operations	(14,519)	(16,808)	(44,476)	(38,577)
Other income (expense):				
Interest income	83	405	307	2,446
Interest expense	(39,124)	(18,767)	(75,864)	(33,922)
Other income (expense), net	79	(471)	(1,618)	(1,788)
Total other income (expense), net	(38,962)	(18,833)	(77,175)	(33,264)
Loss from continuing operations before provision for income taxes	(53,481)	(35,641)	(121,651)	(71,841
Income tax provision	(67)	(270)	(254)	(457)
Net loss from continuing operations	(53,548)	(35,911)	(121,905)	(72,298)
Loss from discontinued operations, net of gain (loss) on divestiture of discontinued operations of $51, $0, $(2) and $0 and income tax provision of $8, $155, $8 and $199, respectively	(1,939)	(48,545)	(15,761)	(107,176)
Net loss	(55,487)	(84,456)	(137,666)	(179,474)
Less: Preferred stock imputed dividends	—	(7,260)	—	(14,385)
Accretion of issuance costs on preferred stock	—	(73)	—	(145)
Net loss applicable to common shares	$ (55,487)	$ (91,789)	$ (137,666)	$ (194,004)
Net loss per common share – basic and diluted:				
Continuing operations, including preferred stock dividends and costs	$ (0.35)	$ (0.42)	$ (0.81)	$ (0.88)
Discontinued operations	(0.01)	(0.47)	(0.10)	(1.09)
Net loss	$ (0.36)	$ (0.89)	$ (0.91)	$ (1.97)
Weighted average shares used in per share calculation	156,017	102,765	150,522	98,231

The accompanying notes are an integral part of these condensed consolidated financial statements.

NEXTWAVE WIRELESS INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(unaudited)

	Six Months Ended June 27, 2009	June 28, 2008
OPERATING ACTIVITIES		
Net loss	$ (137,666)	$ (179,474)
Loss from discontinued operations, net of taxes	(15,761)	(107,176)
Loss from continuing operations	(121,905)	(72,298)
Adjustments to reconcile loss from continuing operations to net cash used in operating activities of continuing operations:		
Amortization of intangible assets	6,829	7,328
Depreciation	759	2,674
Non-cash share-based compensation	2,726	3,112
Non-cash interest expense	70,867	11,006
Gain on sale of spectrum licenses	(671)	—
Asset impairment charges	16,286	1,389
Other non-cash adjustments	(562)	266
Changes in operating assets and liabilities:		
Accounts receivable	(890)	2,387
Deferred contract costs, prepaid expenses and other current assets	1,710	774
Other assets	(365)	293
Accounts payable and accrued liabilities	(4,589)	(3,269)
Deferred revenue	(323)	(2,242)
Other current liabilities	(126)	522
Net cash used in operating activities of continuing operations	(30,254)	(48,058)
INVESTING ACTIVITIES		
Proceeds from maturities of marketable securities	—	106,385
Proceeds from sales of marketable securities	—	92,225
Purchases of marketable securities	—	(112,163)
Proceeds from the sale of wireless spectrum licenses	5,475	—
Proceeds from the sale of other assets	231	—
Cash paid for business combinations, net of cash acquired	—	(5,130)
Payments for wireless spectrum licenses	—	(4,880)
Purchase of property and equipment	(203)	(2,205)
Other, net	(42)	(518)
Net cash provided by investing activities of continuing operations	5,461	73,714
FINANCING ACTIVITIES		
Net cash released from restricted cash account securing long-term obligations	—	75,000
Payments on long-term obligations	(6,731)	(5,938)
Proceeds from the sale of common shares	—	1,738
Net cash provided by (used in) financing activities of continuing operations	(6,731)	70,800
Cash used by discontinued operations:		

Net cash used in operating activities of discontinued operations	(12,851)	(99,483)
Net cash provided by (used in) investing activities of discontinued operations	404	(8,675)
Net cash used in financing activities of discontinued operations	(39)	(538)
Net cash used by discontinued operations	(12,486)	(108,696)
Effect of foreign currency exchange rate changes on cash	270	37
Net decrease in cash and cash equivalents	(43,740)	(12,203)
Cash and cash equivalents, beginning of period	61,517	53,050
Cash and cash equivalents, end of period	17,777	40,847
Less cash and cash equivalents of discontinued operations, end of period	(601)	(6,116)
Cash and cash equivalents of continuing operations, end of period	$ 17,176	$ 34,731
Noncash investing and financing activities:		
Fair value of warrants issued in connection with the Asset Sale Condition of the Second Lien Notes	$ 1,719	$ —
Common stock issued for business acquisitions	$ —	$ 36,572
Common stock issued under stock plans	$ —	$ 7,051
Wireless spectrum licenses acquired with lease obligations	$ —	$ 8,624

The accompanying notes are an integral part of these condensed consolidated financial statements.

NEXTWAVE WIRELESS INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation and Significant Accounting Policies

Financial Statement Preparation

The condensed consolidated financial statements of NextWave Wireless Inc. (together with its subsidiaries, “NextWave”, “we”, “our” or “us”) are unaudited. We have prepared the condensed consolidated financial statements in accordance with the rules and regulations of the United States Securities and Exchange Commission (“SEC”), and therefore, certain information and disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. In the opinion of management, the accompanying condensed consolidated financial statements for the periods presented reflect all adjustments necessary to fairly state our financial position, results of operations and cash flows, including adjustments related to asset impairment write-offs and restructuring-related charges. These condensed consolidated financial statements should be read in conjunction with our audited financial statements for the year ended December 27, 2008, included in our Annual Report on Form 10-K filed with the SEC on April 2, 2009.

We evaluated subsequent events through August 6, 2009, the filing date for this Quarterly Report on Form 10-Q (Note 14).

Basis of Presentation and Liquidity

The accompanying consolidated financial statements have been prepared assuming that we will continue as a going concern. This basis of accounting contemplates the recovery of our assets and the satisfaction of our liabilities in the normal course of business. We generated net losses of $137.7 million and $179.5 million for the six months ended June 27, 2009 and June 28, 2008, respectively, and have an accumulated deficit of $1.0 billion at June 27, 2009. We used cash from operating activities of our continuing operations of $30.3 million and $48.1 million for the six months ended June 27, 2009 and June 28, 2008, respectively. We had a net working capital deficit of $18.5 million at June 27, 2009.

We have funded our operations, business combinations, strategic investments and wireless spectrum license acquisitions primarily with the $550.0 million in cash received in our initial capitalization in April 2005, the net proceeds of $295.0 million from our issuance of 7% Senior Secured Notes (the “Senior Notes”) in July 2006, the net proceeds of $351.1 million from our issuance of Series A Senior Convertible Preferred Stock (the “Series A Preferred Stock”) in March 2007, which, in October 2008, we exchanged for Third Lien Subordinated Secured Convertible Notes due 2011 (the “Third Lien Notes”) in the aggregate principal amount of $478.3 million, and the net proceeds of $101.1 million from our issuance of Senior-Subordinated Secured Second Lien Notes due 2010 (the “Second Lien Notes”) in October 2008 and July 2009. We did not receive any proceeds from the issuance of the Third Lien Notes.

Our total unrestricted cash, cash equivalents and marketable securities held by continuing operations at June 27, 2009 totaled $17.2 million.

In an effort to reduce our future working capital requirements and in order to comply with the terms of our Senior Notes, Second Lien Notes and Third Lien Notes, in the second half of 2008, our Board of Directors approved the implementation of a global restructuring initiative, pursuant to which we have divested, either through sale, dissolution or closure, our network infrastructure businesses and our semiconductor business. The actions completed as a result of our global restructuring initiative are described in more detail below under the heading “Restructuring Initiative and Discontinued Operations”.

Our Senior Notes, Second Lien Notes and Third Lien Notes require that the net proceeds from any sales or dispositions of assets be applied towards the repayment of the notes, rather than being used to fund our ongoing operations. Additionally, the Senior Notes and Second Lien Notes require that we maintain a minimum cash balance of $5.0 million (the “Minimum Balance Condition”). Failure to comply with the Minimum Balance Condition results in an immediate event of default.

On July 2, 2009, we issued additional Second Lien Notes due 2010 (the "Incremental Notes") in the aggregate principal amount of $15.0 million, on the same financial and other terms applicable to our existing Second Lien Notes. The Incremental Notes were issued with an original issuance discount of 5% resulting in gross proceeds of $14.3 million. After payment of transaction related expenses, we received net proceeds of $13.6 million to be used solely in connection with the ordinary course operations of our business and not for any acquisition of assets or businesses or other uses. The purchaser of the Incremental Notes was Avenue AIV US, L.P., an affiliate of Avenue Capital Management II, L.P. ("Avenue Capital"). Robert Symington, a Senior Portfolio Manager with Avenue Capital, is a member of our Board of Directors. In July 2009, we issued warrants to purchase 7.5 million shares of our common stock at an exercise price of $0.01 per share to the purchaser of the Incremental Note. The warrants are exercisable at any time from the date of issuance until June 2012. We issued the Incremental Notes as an alternative to the working capital financing contemplated by the commitment letter we previously entered into with Navation, Inc., an entity controlled by Allen Salmasi, our Chairman.

6

We believe that the completion of the asset divestiture and cost reduction actions contemplated by our global restructuring initiative, our current cash and cash equivalents, projected revenues from our Multimedia segment, the net proceeds from the issuance of the Incremental Notes and our ability to pay payment-in-kind interest, in lieu of cash interest, to the holders of 67% of the aggregate remaining outstanding principal balance of our Senior Notes will allow us to meet our estimated working capital requirements at least through June 2010. Should we be unable to achieve the revenues and/or cash flows through June 2010 as contemplated in our operating plan, or if we were to incur significant unanticipated expenditures, we will implement certain additional actions to reduce our working capital requirements including staffing reductions, the deferral of capital expenditures associated with the build-out requirements of our wireless spectrum licenses and further reductions in foreign operations.

Our secured notes require payments of approximately $332.0 million plus accrued interest in 2010. If we are unable to consummate sales of our wireless spectrum assets that are sufficient to retire this indebtedness, we may also be required to renegotiate the terms of our secured notes, and/or seek new debt and/or equity financing. There can be no assurance that we will be able to renegotiate the terms of our secured notes or that any additional financing will be available on acceptable terms, if at all. Insufficient capital or inability to renegotiate or repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing under the U.S. Bankruptcy Code.

Restructuring Initiative and Discontinued Operations

Pursuant to our global restructuring initiative and the terms of our Senior Notes, Second Lien Notes and Third Lien Notes, we have completed the following actions:

- We have terminated approximately 620 employees worldwide and vacated seven leased facilities.
- We sold a controlling interest in our IPWireless subsidiary.
- We shut down the operations of our other network infrastructure businesses, which comprise our Networks segment, including the operations of our GO Networks and Cygnus subsidiaries and our Global Services and NextWave Network Support strategic business units.
- We initiated bankruptcy liquidation proceedings for three of our network infrastructure subsidiaries in Israel, Denmark and Canada, which proceedings are intended to provide an orderly process for the discontinuance of operations and to advance our divestiture and cost reduction strategy.
- In the first quarter of 2009, we shut down our semiconductor business and terminated approximately 220 employees and, subsequently, in the third quarter of 2009, we sold certain of our owned semiconductor business patents and patent applications to a third party.
- We are meeting with various financial advisors with respect to the potential disposition of our wireless spectrum assets, including our WiMax Telecom business.

Several factors led to our decision to divest our network infrastructure businesses, including adverse worldwide economic conditions, which we believe have adversely affected manufacturers of telecommunications equipment and technology and caused our Networks segment to experience lower than projected contract bookings and revenues. We believe these conditions have also led to a delay in global network deployments, which adversely impacted the timing and volume of projected commercial sales of our discontinued semiconductor business.

Considering the actions described above, we have classified the businesses comprising our Networks and Semiconductors segments as well as our WiMax Telecom business, which is included in our Strategic Initiatives segment, as discontinued operations for all periods presented in accordance with Statement of Financial Accounting Standards (“SFAS”) No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*.

The carrying amounts of the assets and liabilities of our discontinued operations are as follows:

(in thousands)	**June 27, 2009**	**December 27, 2008**
Cash and cash equivalents	$ 601	$ 669
Restricted cash	494	642
Accounts receivable, net of allowance for doubtful accounts of $1,382	628	365
Inventory, prepaid expenses and other assets	5,756	7,443
Intangible assets, net	1,723	2,181
Property and equipment, net	9,494	13,426
Asset of discontinued operations	18,696	24,726
Wireless spectrum licenses included in wireless spectrum licenses held for sale	35,826	36,094
Total assets of discontinued operations	$ 54,522	$ 60,820
Accounts payable	$ 2,772	$ 2,683

Accrued expenses	817	4,032
Deferred revenue, current portion of long-term obligations and other current liabilities	7,165	7,431

7

Deferred income tax liabilities	4,711	4,711
Other liabilities	1,174	1,304
Long-term obligations, net of current portion	4,069	3,933
Liabilities of discontinued operations	$ 20,708	$ 24,094

The results of operations of our discontinued segments are as follows:

	Three Months Ended		Six Months Ended	
	June 27,	June 28,	June 27,	June 28,
(in thousands)	2009	2008	2009	2008
Revenues	$ $1,899	$ 15,236	$ 3,132	$ 26,670
Operating expenses:				
Cost of revenues	1,536	16,579	3,249	30,593
Engineering, research and development	(797)	33,356	2,738	72,630
Sales and marketing	193	6,642	909	15,728
General and administrative	1,841	5,185	2,473	12,044
Asset impairment charges	1,500	2,196	4,645	2,196
Restructuring charges	283	125	4,931	125
Total operating expenses	4,556	64,083	18,945	133,316
Net gain (loss) on business divestitures	(2)	—	51	—
Loss from operations	(2,659)	(48,847)	(15,762)	(106,646)
Other income (expense), net	728	457	9	(331)
Loss before income taxes	(1,931)	48,390)	(15,753)	(106,977)
Income tax provision	(8)	(155)	(8)	(199)
Loss from discontinued operations	$ $(1,939)	$ (48,545)	$ (15,761)	$ (107,176)

Principles of Consolidation

Our consolidated financial statements include the assets, liabilities and operating results of our wholly-owned subsidiaries as of June 27, 2009 and June 28, 2008 and for the three and six months then ended, respectively. All significant intercompany accounts and transactions have been eliminated in consolidation.

Fiscal Year End

We operate on a 52-53 week fiscal year ending on the Saturday nearest to December 31 of the current calendar year or the following calendar year. Normally, each fiscal year consists of 52 weeks, but every five or six years the fiscal year consists of 53 weeks. Fiscal year 2009 is a 53-week year ending on January 2, 2010. The three and six month periods ended June 27, 2009 and June 28, 2008 include 13 and 26 weeks, respectively.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. On an ongoing basis, we evaluate our estimates, including those related to revenue recognition, income taxes and the valuation of marketable securities, share-based awards, goodwill, wireless spectrum licenses, intangible assets and other long-lived assets. Actual results could differ from those estimates.

Revenues, Cost of Revenues and Deferred Contract Costs

Our continuing and discontinued operations have derived revenues from the following sources:

- Contracts to provide multimedia software products for mobile and home electronic devices and related royalties through our PacketVideo subsidiary;
- Sales of wireless broadband and mobile broadcast network products and services by our IPWireless and GO Networks subsidiaries, which are included in discontinued operations in fiscal year 2008. The wireless broadband and mobile broadcast network products sold by IPWireless and GO Networks often included embedded software; and
- Customer subscriptions for the WiMAX network operated by our WiMax Telecom subsidiary, which is included in discontinued operations for all periods presented.

For arrangements that do not contain software or embedded software that is incidental to the arrangement, we recognize revenue in accordance with the principles in SEC Staff Accounting Bulletin (“SAB”) No. 104, *Revenue Recognition*, when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable and collectability is reasonably assured.

For software arrangements, or in cases where the software is considered more than incidental and is essential to the functionality of the hardware or the infrastructure products, revenue is recognized pursuant to American Institute of Certified Public Accountants ("AICPA") Statement of Position ("SOP") No. 97-2, *Software Revenue Recognition*, SOP No. 98-9, *A Modification of SOP 97-2 Software Revenue Recognition with Respect to Certain Transactions*, and Emerging Issues Task Force ("EITF") Issue No. 03-5, *Applicability of SOP 97-2 to Non-Software Deliverables in an Arrangement Containing More-Than-Incidental Software*. We also consider the provisions of SOP No. 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts*.

Our revenue arrangements can include multiple deliverables, including hardware, a software or technology license, non-recurring engineering services and post-contract customer support. For these arrangements, we consider the guidance provided by EITF Issue No. 00-21, *Revenue Arrangements with Multiple Deliverables*. Accordingly, we evaluate each deliverable in the arrangement to determine whether it represents a separate unit of accounting. If objective and reliable evidence of fair value exists ("vendor specific objective evidence") for all units of accounting in the arrangement, revenue is allocated to each unit of accounting or element based on those relative fair values. If vendor specific objective evidence of fair value exists for all undelivered elements, but not for delivered elements, the residual method would be used to allocate the arrangement consideration. If elements cannot be treated as separate units of accounting because vendor specific objective evidence of the undelivered elements does not exist, they are combined into a single unit of accounting and the associated revenue is deferred until all combined elements have been delivered or until there is only one remaining element to be delivered. To date, we have not been able to establish vendor specific objective evidence for any of the elements included in our revenue arrangements, as the software and hardware products or services have not yet been sold separately, nor has a standard price list been established. As a result, once the software or technology is delivered and the only undelivered element is services, the entire non-contingent contract value is recognized ratably over the remaining service period. Costs directly attributable to providing these services are also deferred and amortized over the remaining service period of the respective revenues.

Services sold separately are generally billed on a time and materials basis at agreed-upon billing rates, and revenue is recognized as the services are performed.

We earn royalty revenues on licensed embedded multimedia products sold by our licensees. Generally, royalties are paid by licensees on a per unit or contingent usage basis. The licensees generally report and pay the royalty in the quarter subsequent to the period of delivery or usage. We recognize royalty revenues based on royalties reported by licensees. When royalty arrangements also provide for ongoing post-contract customer support that does not meet the criteria to be recognized upon delivery of the software, the royalty is recognized ratably from the date the royalty report is received through the stated remaining term of the post-contract customer support. In limited situations, we have determined that post-contract customer support revenue can be recognized upon delivery of the software because the obligation to provide post-contract customer support is for one year or less, the estimated cost of providing the post-contract customer support during the arrangement is insignificant and unspecified upgrades or enhancements offered for the particular post-contract customer support arrangement historically have been and are expected to continue to be minimal and infrequently provided. In these instances, we have accrued all the estimated costs of providing the services upfront, which to date have been insignificant.

If we receive non-refundable advanced payments from licensees that are allocable to future contracts periods or could be creditable against other obligations of the licensee to us, the recognition of the related revenue is deferred until such future periods or until such creditable obligations lapse.

In instances where we have noted extended payment terms, revenue is recognized in the period the payment becomes due. If an arrangement includes specified upgrade rights, revenue is deferred until the specified upgrade has been delivered.

We do not generally allow for product returns and we have no history of significant product returns. Accordingly, no allowance for returns has been provided.

The timing and amount of revenue recognition depends upon a variety of factors, including the specific terms of each arrangement and the nature of our deliverables and obligations. Determination of the appropriate amount of revenue recognized involves judgments and estimates that our management believes are reasonable.

Income Taxes

We recognize income tax expense based on estimates of our consolidated taxable income (loss) taking into account the various legal entities through which, and jurisdictions in which, we operate. As such, income tax expense may vary from the customary relationship between income tax expense and income (loss) before taxes.

Recent Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board (“FASB”) issued FSAS No. 167, *Amendments to FASB Interpretation No. 46(R)*. SFAS No. 167 amends FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities*

("FIN 46(R)"), to require us to perform an analysis of our existing investments to determine whether our variable interest or interests give us a controlling financial interest in a variable interest entity. This analysis identifies the primary beneficiary of a variable interest entity as the enterprise that has both the power to direct the activities of significant impact on a variable interest entity and the obligation to absorb losses or receive benefits from the variable interest entity that could potentially be significant to the variable interest entity. It also amends FIN 46(R) to require ongoing reassessments of whether an enterprise is the primary beneficiary of a variable interest entity. SFAS No. 167 is effective for our fiscal year beginning January 3, 2010. Our adoption of SFAS No. 167 is not expected to have a material impact on our consolidated financial statements.

In June 2009, the FASB issued financial accounting statement No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles-a replacement of FASB Statement No. 162*. The FASB Accounting Standards Codification is intended to be the source of authoritative U.S. generally accepted accounting principles (GAAP) and reporting standards as issued by the FASB. Its primary purpose is to improve clarity and use of existing standards by grouping authoritative literature under common topics. This Statement is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The Codification does not change or alter existing GAAP and there is no expected impact on our consolidated financial position or results of operations.

In April 2009, the FASB issued FSP No. FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments*. FSP No. FAS 115-2 and FAS 124-2 amends the other-than-temporary impairment guidance to improve the presentation and disclosure of other-than-temporary impairments on debt and equity securities in the financial statements. As permitted by FSP, we elected to early adopt FSP No. FAS 115-2 and FAS 124-2 in the first quarter of 2009. Our adoption of FSP No. FAS 115-2 and FAS 124-2 did not have a material impact on our consolidated financial statements.

In April 2009, the FASB issued FSP No. FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*. FSP No. FAS 157-4 provides additional guidance for estimating fair value in accordance with SFAS No. 157, *Fair Value Measurements*, when the volume and level of activity for the asset or liability have significantly decreased and requires that companies provide interim and annual disclosures of the inputs and valuation technique(s) used to measure fair value. As permitted by the FSP, we elected to early adopt FSP No. FAS 157-4 in the first quarter of 2009. Our adoption of FSP No. FAS 157-4 did not have a material impact on our consolidated financial statements.

In April 2009, the FASB issued FSP No. FAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments.* FSP No. FAS 107-1 and APB 28-1 amends SFAS No. 107, *Disclosures about Fair Value of Financial Instruments*, to require disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. As permitted by the FSP, we elected to early adopt FSP No. FAS 107-1 and APB 28-1 in the first quarter of 2009. The interim disclosures required by FSP No. FAS 107-1 and APB 28-1 are included in Note 10.

In June 2008, the FASB ratified EITF Issue No. 07-5, *Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock*. Paragraph 11(a) of SFAS No 133, *Accounting for Derivatives and Hedging Activities*, specifies that a contract that would otherwise meet the definition of a derivative, but is both (a) indexed to an entity's own stock and (b) classified in stockholders' equity in the statement of financial position would not be considered a derivative financial instrument. EITF Issue No. 07-5 provides a new two-step model to be applied in determining whether a financial instrument or an embedded feature is indexed to an issuer's own stock and thus able to qualify for the SFAS 133 paragraph 11(a) scope exception. Our adoption of EITF Issue No. 07-5 in the first quarter of 2009 did not have a material impact on our consolidated financial statements.

In May 2008, the FASB issued FASB Staff Position No. APB 14-1 *Accounting for Convertible Debt Instruments That May Be Settled Upon Conversion (Including Partial Cash Settlement)* ("FSP No. APB 14-1"). FSP No. APB 14-1, which is effective for the first quarter of 2009, requires the initial proceeds from convertible debt that may be settled in cash to be bifurcated between a liability component and an equity component. Our Third Lien Notes do not allow for cash settlement upon conversion and therefore are excluded from the scope of FSP No. APB 14-1. Accordingly, our adoption of FSP No. APB 14-1 did not have a material impact on our consolidated financial statements.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities - An amendment of FASB Statement No. 133* , which requires enhanced qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative agreements. We do not currently transact in derivative instruments or engage in hedging activities and therefore our adoption of SFAS No. 161 in the first quarter of 2009 did not have an impact on our consolidated financial statements.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements — an amendment of Accounting Research Bulletin No. 51*. SFAS No. 160 establishes accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributable to the parent and to the noncontrolling interest, changes in a parent’s ownership interest, and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. SFAS No. 160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. Our adoption of SFAS No. 160 did not have a material impact on our consolidated financial statements.

2. Wireless Spectrum Licenses

We continue to market for sale our wireless spectrum holdings. Any sale or transfer of the ownership of our wireless spectrum holdings is subject to regulatory approval. Upon consummation of a potential sale of our spectrum holdings, we would be required to pay certain fees to our investment bankers. We are required to use the net proceeds from the sale of our wireless spectrum licenses to redeem our Senior Notes, Second Lien Notes and Third Lien Notes.

During the three and six months ended June 27, 2009, we completed sales of certain of our owned Advanced Wireless Services ("AWS") spectrum licenses in the United States to third parties for net proceeds, after deducting direct and incremental selling costs, of $3.7 million and $5.5 million, and recognized net gains on the sales of $0.7 million and $0.7 million, respectively. The net proceeds from the sales were used to redeem a portion of the Senior Notes at a redemption price of 105% of the principal amount thereof plus accrued interest.

In July 2009, we completed the sale of certain of our owned AWS spectrum licenses in the United States to third parties for net proceeds of $17.0 million.

In addition to the July 2009 sales of spectrum licenses, we anticipate that certain of our remaining wireless spectrum licenses will be sold within the next twelve months. Accordingly, at June 27, 2009, we classified wireless spectrum holdings with a carrying value of $113.1 million as assets held for sale in accordance with SFAS No. 144 and we are no longer amortizing these assets. Any net proceeds from these sales received after July 15, 2009 will be used to redeem a portion of the Senior Notes at a redemption price of 102% of the principal amount thereof plus accrued interest. As of June 27, 2009, the aggregate net carrying value of our remaining wireless spectrum license assets that are not considered held for sale was $417.8 million, which includes $79.1 million of asset value allocated as a result of related deferred tax liabilities determined in accordance with EITF Issue No. 98-11, *Accounting for Acquired Temporary Differences in Certain Purchase Transactions That Are Not Accounted for as Business Combinations*. Unpaid spectrum lease obligations related to our wireless spectrum holdings aggregated $42.7 million at June 27, 2009.

Through our continued efforts to sell our remaining domestic AWS spectrum licenses and our wireless spectrum licenses in Europe, we determined that the carrying value of these spectrum licenses exceeded their fair value based primarily on bids received and negotiations with third parties regarding the sale of these licenses which occurred in April 2009. Accordingly, during the six months ended June 27, 2009, we wrote-down the carrying value of our domestic AWS spectrum licenses and our wireless spectrum licenses in Europe to their estimated fair value and recognized an asset impairment charge of $16.1 million, the substantial majority of which is reported in continuing operations.

3. Long-Lived Asset Impairment Charges

In connection with the implementation of our global restructuring initiative, we continue to review our long-lived assets for impairment and, during the six months ended June 27, 2009, determined that indicators of impairment were present for the long-lived assets in our semiconductor segment as well as certain other long-lived assets. Accordingly, based on the guidance provided by SFAS No. 144, we performed an assessment to determine if the carrying value of these long-lived assets was recoverable through estimated undiscounted future cash flows resulting from the use of the assets and their eventual disposition.

For the long-lived asset recoverability assessment performed during the six months ended June 27, 2009, the undiscounted cash flows used to estimate the recoverability of the asset carrying values were based on the estimated future net cash flows to be generated from the sale or licensing of the assets, less estimated costs to sell. Based on the analysis, we concluded that the carrying value of certain of our long-lived assets was not recoverable. The impaired assets primarily consist of research and development equipment utilized in our discontinued semiconductor business. Accordingly, during the three and six months ended June 27, 2009, we recognized additional asset impairment charges of $1.6 million and $20.9 million, of which $1.5 million and $4.6 million is reported as an asset impairment charge in discontinued operations and $0.1 million and $16.3 million is reported as an asset impairment charge in continuing operations, respectively.

There are inherent estimates and assumptions underlying the projected cash flows utilized in the recoverability assessment and management's judgment is required in the application of this information to the determination of the recovery value of the assets. No assurance can be given that the underlying estimates and assumptions will materialize as anticipated.

4. Restructuring Charges

As previously described, in the second half of 2008, we commenced the implementation of a global restructuring initiative, pursuant to which we have divested, either through sale, dissolution or closure, our network infrastructure businesses and our semiconductor business. In connection with the implementation of our global restructuring initiative, we have terminated approximately 620 employees worldwide and vacated seven leased facilities, of which approximately 230 employees were terminated and two leased facilities were vacated during the six months ended June 27, 2009.

11

The following summarizes the restructuring activity for the six months ended June 27, 2009 and the related restructuring liabilities:

(in thousands)	**Balance at December 27, 2008**	**Charges to Expense**	**Cash Payments**	**Reversal of Deferred Charges**	**Balance at June 27, 2009**
Employee termination costs	$ 237	$ 4,884	$ (5,085)	$ —	$ 36
Lease abandonment and facility closure costs	1,616	282	(1,173)	1,136	1,861
Other related costs, including contract termination costs, selling costs and legal fees	2,668	1,813	(2,286)	—	2,195
Total	$ 4,521	$ 6,979	$ (8,544)	$ 1,136	$ 4,092
Continuing operations (1)	3,492	2,048			3,789
Discontinued operations	1,029	4,931			303
Total	$ 4,521	$ 6,979			$ 4,092

(1) Included in the restructuring charges of continuing operations for the three and six months June 27, 2009 is a credit of $1.0 million and net charges of $0.4 million of lease abandonment and facility closure costs related to certain shared facilities. The credit during the three months ended June 27, 2009 resulted from a reduction in our lease obligation pursuant to a sublease termination agreement that was consummated in June 2009. Also included in the restructuring charges of continuing operations for the three and six months ended June 27, 2009 are costs related to the divestiture and closure of discontinued businesses totaling $0.2 million and $1.3 million, respectively.

We anticipate that we may incur additional restructuring charges in the future as our global restructuring initiative moves forward.

5. Long-Term Obligations

Long-term obligations held by continuing operations consist of the following:

(dollars in thousands)	**June 27, 2009**	**December 27, 2008**
7% Senior Secured Notes due July 2010, net of unamortized discount of $14,103 and $20,713 at June 27, 2009 and December 27, 2008, respectively	$ 201,722	$ 193,474
14% Senior-Subordinated Secured Second Lien Notes due December 2010, net of unamortized discount of $14,791 and $16,951 at June 27, 2009 and December 27, 2008, respectively	101,390	91,505
7.5% Third Lien Subordinated Secured Convertible Notes due December 2011, net of unamortized discount of $161,421 and $185,382 at June 27, 2009 and December 27, 2008, respectively	343,045	300,685
Wireless spectrum leases, net of unamortized discounts of $17,846 and $18,973 at June 27, 2009 and December 27, 2008, respectively; expiring from 2011 through 2036 with one to five renewal options ranging from 10 to 15 years each	24,805	24,419
Collateralized non-recourse bank loan with interest at 30-day LIBOR plus 0.25%; principal and interest due upon sale of auction rate securities; secured by auction rate securities	21,382	21,459
Other	—	1,322
Long-term obligations held by continuing operations	692,344	632,864
Less current portion	(138,563)	(136,567)
Long-term portion	$ 553,781	$ 496,297

Senior, Second Lien and Third Lien Notes

Under the terms of the purchase agreements for our Senior Notes and Second Lien Notes, we were required to enter into binding agreements to effect asset sales generating net proceeds of at least $350 million no later than March 31, 2009 and consummate such sales no later than six months following execution of such agreements, unless closing is delayed solely due to receipt of pending regulatory approvals (the “Asset Sale Condition”). We did not meet the Asset Sale Condition. As a result, pursuant to the terms of the note purchase agreements, the interest rate on the Senior Notes increased by 200 basis points effective March 31, 2009 and, on April 8, 2009, we issued additional warrants to purchase an aggregate of 10.0 million shares of our common stock at an exercise price of $0.01 per share to the purchasers of the Second Lien Notes. Of the warrants issued, 7.5 million were issued to Avenue AIV US, L.P., an affiliate of Avenue Capital. The warrants are exercisable at any time through April 6, 2012. The grant-date fair value of the warrants, which totaled $1.7 million, was recorded to additional paid-in capital and reduced the carrying value of the Second Lien Notes, and is recognized as additional interest expense over the remaining term of the Second Lien Notes.

On April 1, 2009, we obtained an amendment and waiver from the holders of our Senior Notes, Second Lien Notes, and Third Lien Notes that adjusts the Minimum Balance Condition from $15 million to $5 million, waives certain events of default relating to timely delivery of a new operating budget, permits us to issue up to $25 million of indebtedness on a *pari passu* basis with our Second Lien Notes, and allows us to pay certain holders of our Senior Notes payment-in-kind interest at a rate of 14%. Pursuant to the amendment and waiver, holders of 67% of the aggregate remaining outstanding principal balance of our Senior Notes at June 27, 2009 have elected to receive payment-in-kind interest in lieu of cash interest. As of June 27, 2009, we have accrued for $6.2 million in payment-in-kind interest which has been added to the outstanding principal balance of our Senior Notes in the consolidated balance sheet.

On July 2, 2009, we issued additional Second Lien Notes due 2010 (the "Incremental Notes") in the aggregate principal amount of $15.0 million, on the same financial and other terms applicable to our existing Second Lien Notes. The Incremental Notes were issued with an original issuance discount of 5% resulting in gross proceeds of $14.3 million. After payment of transaction related expenses, we received net proceeds of $13.6 million to be used solely in connection with the ordinary course operations of our business and not for any acquisition of assets or businesses or other uses. The Incremental Purchaser was Avenue AIV US, L.P., an affiliate of Avenue Capital Management II, L.P. ("Avenue Capital"). Robert Symington, a Senior Portfolio Manager with Avenue Capital, is a member of our Board of Directors. In connection with the issuance of the Incremental Notes in July 2009, we issued warrants to purchase 7.5 million shares of our common stock at an exercise price of $0.01 per share to the purchaser of the Incremental Note. The warrants are exercisable at any time from the date of issuance until June 2012. We issued the Incremental Notes as an alternative to the working capital financing contemplated by the commitment letter we previously entered into with Navation, Inc., an entity controlled by Allen Salmasi, our Chairman.

6. Comprehensive Loss

Comprehensive loss was as follows:

	Three Months Ended		Six Months Ended	
	June 27,	**June 28,**	**June 27,**	**June 28,**
(in thousands)	**2009**	**2008**	**2009**	**2008**
Net loss	$ (55,487)	$ (84,456)	$ (137,666)	$ (179,474)
Net unrealized gains on marketable securities	—	10	—	—
Foreign currency translation adjustment	4,772	(306)	879	5,600
Total comprehensive loss	$ (50,715)	$ (84,752)	$ (136,787)	$ (173,874)

7. Net Loss Per Common Share Information

Basic and diluted net loss per common share for the three and six months ended June 27, 2009 and June 28, 2008 is computed by dividing net loss applicable to common shares during the period by the weighted average number of common shares outstanding during the respective periods, without consideration of common stock equivalents.

The following securities that could potentially dilute earnings per share in the future are not included in the determination of diluted loss per share as they are antidilutive. The share amounts are determined using a weighted average of the shares outstanding during the respective periods and assume that the last day of the respective quarterly periods were the end dates of the contingency period for any contingently issuable shares in accordance with SFAS No. 128, *Earnings Per Share*.

	Three Months Ended		Six Months Ended	
	June 27,	**June 28,**	**June 27,**	**June 28,**
(in thousands)	**2009**	**2008**	**2009**	**2008**
Third Lien Notes / Series A Preferred Stock	44,831	34,662	44,414	34,340
Outstanding stock options	14,876	22,936	15,428	21,753
Common stock warrants	500	2,436	500	2,436

Restricted stock	343	63	715	65
Contingently issuable shares under advisory contract	—	833	—	833

In addition to the securities listed above, we expect to issue 3.7 million and 2.5 million shares of our common stock during the third quarter of 2009 in payment of additional purchase consideration in connection with our 2007 acquisitions of IPWireless and GO Networks, respectively. Additionally, in July 2009 we issued warrants to purchase 7.5 million shares of our common stock at an exercise price of $0.01 per share to the purchaser of the Incremental Notes.

8. Stockholders' Deficit

Changes in shares of common stock and stockholders' deficit for the six months ended June 27, 2009 were as follows:

(in thousands)	**Shares of Common Stock**	**Total Stockholders' Deficit**
Balance at December 27, 2008	103,092	(56,116)
Share-based compensation expense	—	3,000
Fair value of warrants issued in connection with the Second Lien Notes	—	1,719
Foreign currency translation adjustment	—	879
Net loss	—	(137,666)
Balance at June 27, 2009	103,092	(188,184)

9. Share-Based Payments

At June 27, 2009, we may issue up to an aggregate of 32.7 million shares of common stock under our equity compensation plans, of which 17.5 million shares are reserved for issuance upon exercise of granted and outstanding options and 15.2 million shares are available for future grant.

The following table summarizes stock option activity under our equity compensation plans during the six months ended June 27, 2009:

	Number of Shares (in thousands)	**Weighted Average Exercise Price per Share**	
Outstanding at December 27, 2008	16,259	$	6.71
Granted	8,639	$	0.33
Exercised	—	$	—
Canceled	(7,380)	$	6.90
Outstanding at June 27, 2009	17,518	$	3.49
Exercisable at June 27, 2009	13,171	$	3.56

We utilized the Black-Scholes option-pricing model for estimating the grant-date fair value of employee stock awards with the following assumptions:

	Six Months Ended	
	June 27, 2009	**June 28, 2008**
Risk-free interest rate	2.26%	1.98%-3.47%
Expected life (in years)	5.3	3.5-10.0
Stock price volatility	113%	53%
Expected dividend yield	0%	0%
Weighted average grant-date fair value per share	0.27	2.81

The risk-free interest rates are based on the implied yield available on U.S. Treasury constant maturities in effect at the time of the grant with remaining terms equivalent to the respective expected lives of the awards. Because we have a limited history of stock option exercises and due to the recent significant structural changes to our business resulting from the implementation of our global restructuring initiative, we determine the expected award life based primarily on the "simplified method" described in SAB No. 107, *Share-Based Payments*, and the expected award lives applied by certain of our peer companies to determine the expected life of each grant. We determine expected volatility based primarily on our historical stock price volatility. We have never paid cash dividends and have no present intention to pay cash dividends on our common stock and therefore we have assumed a dividend yield of zero.

The following table summarizes the share-based compensation expense included in each operating expense line item in our consolidated statements of operations:

	Three Months Ended		Six Months Ended	
	June 27,	**June 28,**	**June 27,**	**June 28,**
(in thousands)	**2009**	**2008**	**2009**	**2008**
Cost of revenues	$ 249	$ 111	$ 363	$ 184
Engineering, research and development	297	297	496	647
Sales and marketing	109	103	147	175
General and administrative	1,119	898	1,720	2,106
Total continuing operations	1,774	1,409	2,726	3,112
Discontinued operations	(61)	(1,723)	274	1,935
Total share-based compensation	$ 1,713	$ (314)	$ 3,000	$ 5,047

14

At June 27, 2009, the total unrecognized share-based compensation expense relating to unvested share-based awards granted to employees, net of forfeitures, was $6.6 million, which we anticipate recognizing as a charge against income over a weighted average period of 3.0 years.

10. Fair Value Measurements

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following table summarizes our assets and liabilities that require fair value measurements on a recurring basis and their respective input levels based on the SFAS No. 157 fair value hierarchy:

		Fair Value Measurements at June 27, 2009 Using:		
(in thousands)	**Fair Value At June 27, 2009**	**Quoted Market Prices for Identical Assets (Level 1)**	**Significant Other Observable Inputs (Level 2)**	**Significant Unobservable Inputs (Level 3)**
Cash and cash equivalents	$ 17,777	$ 17,777	$ —	$ —
Auction rate securities[1]	23,612	—	—	23,612
Auction rate securities rights[2]	1,862	—	—	1,862
Embedded derivatives [3]	13,021	—	—	13,021

(1) Included in restricted cash and marketable securities in the accompanying consolidated balance sheet.
(2) Included in other noncurrent assets in the accompanying consolidated balance sheet.
(3) Included in other long-term liabilities in the accompanying consolidated balance sheet.

Auction Rate Securities. At June 27, 2009, we estimated the fair value of our auction rate securities, which we have classified as trading securities under SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, using a discounted cash flow model (Level 3 inputs), which measures fair value based on the present value of projected cash flows over a specific period. The values are then discounted to reflect the degree of risk inherent in the security and achieving the projected cash flows. The discounted cash flow model used to determine the fair value of the auction rate securities utilized a discount rate of 3.3%, which represents an estimated market rate of return, and an estimated period until sale and/or successful auction of the security of 1.0 year. The determination of the fair value of our auction rate securities also considered, among other things, the collateralization underlying the individual securities and the creditworthiness of the counterparty.

Auction Rate Securities Rights. Our auction rate securities rights allow us to sell our auction rate securities at par value to UBS at any time during the period of June 30, 2010 through July 2, 2012. We have elected to measure the fair value of the auction rate securities rights under SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an Amendment of FASB Statement No. 115*,which we believe will mitigate volatility in our reported earnings due to the inverse relationship between the fair value of the auction rate securities rights and the underlying auction rate securities. At June 27, 2009, we estimated the fair value of our auction rate securities rights using a discounted cash flow model, similar to the auction rate securities (Level 3 inputs). The discounted cash flow model utilized a discount rate of 1.8% and an estimated period until recovery of 1.0 years, which represents the period until the earliest date that we can exercise our auction rate securities rights.

Embedded Derivatives. Our obligation to redeem the Second Lien Notes and Third Lien Notes upon an asset sale and a change in control constitute embedded derivatives under SFAS No. 133. Accordingly, we have bifurcated the estimated fair value of each embedded derivative from the fair value of the Second Lien Notes and Third Lien Notes upon issuance, and recognized subsequent changes in the fair value of the embedded derivatives against income. We measured the estimated fair value of the Second Lien Notes and Third Lien Notes embedded derivatives using a probability-weighted discounted cash flow model (Level 3 inputs). The discounted cash flow model utilizes management assumptions of the probability of occurrence of a redemption of the Second Lien Notes and Third Lien Notes upon an asset sale and a change in control.

The following table summarizes the activity in assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3):

			Embedded Derivatives		
(in thousands)	**Auction Rate Securities**	**Auction Rate Securities Rights**	**Second Lien Notes**	**Third Lien Notes**	**Total**
Balance at December 27, 2008	$ 20,798	$ 4,210	$ (968)	$ (10,792)	$ 13,248

Purchases, issuances, sales, exchanges and settlements	—	—	(25)	(203)	(228)
Unrealized gains (losses) included in other expense, net	2,814	(2,348)	46	(1,079)	(567)
Balance at June 27, 2009	$ 23,612	$ 1,862	$ (947)	$ (12,074)	$ 12,453

Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

The following table summarizes our assets and liabilities that were measured at fair value on a nonrecurring basis during the period and their respective input levels based on the SFAS No. 157 fair value hierarchy:

		Fair Value Measurements Using:		
		Quoted Market Prices for Identical Assets	Significant Other Observable Inputs	Significant Unobservable Inputs
(in thousands)	Fair Value At June 27, 2009	(Level 1)	(Level 2)	(Level 3)
Wireless spectrum licenses held for sale	$ 113,063	$ —	$ 113,063	$ —
Property and equipment, net[1]	17,693	—	—	17,693

(1) Includes property and equipment of continuing operations of $3.2 million, property and equipment of discontinued operations of $9.5 million and property and equipment held for sale by discontinued operations of $5.0 million.

Wireless Spectrum Licenses. Through our continued efforts to sell our remaining domestic AWS spectrum licenses and our wireless spectrum licenses in Germany, we determined that the carrying value of these spectrum licenses exceeded their fair value based primarily on bids received and negotiations with third parties regarding the sale of these licenses which occurred in April 2009. We estimated the fair value of these wireless spectrum licenses based on advanced negotiations and submitted bids from third parties for the purchase of the licenses (Level 2 inputs). Accordingly, during the six months ended June 27, 2009, we wrote-down the carrying value of our domestic AWS spectrum licenses and our wireless spectrum licenses in Germany to their estimated fair value and recognized an asset impairment charge of $16.2 million, the substantial majority of which is reported in continuing operations.

Property and Equipment, Net. In connection with the implementation of our global restructuring initiative, we continue to review our long-lived assets for impairment and, during the six months ended June 27, 2009, determined that indicators of impairment were present for the long-lived assets in our semiconductor segment as well as certain other long-lived assets. Accordingly, based on the guidance provided by SFAS No. 144, we performed an assessment to determine if the carrying value of these long-lived assets was recoverable through estimated undiscounted future cash flows resulting from the use of the assets and their eventual disposition (Level 3 inputs). Based on the impairment assessment performed, we determined that the carrying value of our property and equipment exceeded its estimated fair value and accordingly we recognized an asset impairment charge of $1.5 million and $4.2 million during the three and six months ended June 27, 2009.

The following table summarizes the activity in assets and liabilities measured at fair value on a non-recurring basis using significant unobservable inputs (Level 3):

(in thousands)	Property and Equipment, Net
Balance at December 27, 2008	$ 24,132
Purchases and disposals, net	(258)
Depreciation expense	(1,830)
Asset impairment charges	(4,163)
Foreign currency and other	(188)
Balance at June 27, 2009	$ 17,693

Fair Value of Other Financial Instruments

The carrying amounts of certain of our financial instruments of continuing operations, including cash and cash equivalents, accounts receivable, accounts payable, accrued expenses and note payable to bank, approximate fair value due to their short-term nature. The carrying amounts and fair values of our long-term obligations of continuing operations are as follows:

	June 27, 2009		December 27, 2008	
(in thousands)	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Senior Notes	$ 201,722	$ 179,995	$ 193,474	$ 171,822
Second Lien Notes	101,390	101,390	91,505	91,505

Third Lien Notes	343,045	343,045	300,685	300,685
Wireless spectrum leases	24,805	11,716	24,419	16,445

We determined the fair value of our Senior Notes and wireless spectrum licenses using a discounted cash flow model with a discount rate of 32.5% at June 27, 2009, which represents our estimated incremental borrowing rate. The Third Lien Notes were measured at fair value upon issuance in October 2008.

11. Legal Proceedings

On September 16, 2008, a putative class action lawsuit, captioned "Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc., Allen Salmasi, George C. Alex and Frank Cassou, Defendants", was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the

Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys' fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned "Benjamin et al. v. NextWave Wireless Inc. et al." was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, between November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint.
We were notified on July 11, 2008 that the former stockholders of GO Networks have filed a demand for arbitration in connection with the February 2008 milestone. In the demand, the stockholder representative has claimed that we owe compensation to the former stockholders of GO Networks on the basis of GO Networks purportedly having partially achieved the February 2008 milestone under the acquisition agreement. The stockholder representative seeks damages of $10.4 million. Further, on December 5, 2008, the stockholder representative amended his demand and added claims pertaining to the August 2008 milestone. In the claims, the stockholder representative asserts, among other claims, that we acted in bad faith in a manner that prevented the achievement of the milestone, and he seeks damages of $12.8 million in connection with these additional claims. We dispute that the February 2008 milestone has been met and deny any wrongdoing with respect to the August 2008 milestone. The dispute will be administered and heard in accordance with procedures set forth by the International Centre for Dispute Resolution, a division of the American Arbitration Association. We submitted our Statement of Defense on August 25, 2008 and an Amended Statement of Defense on January 6, 2009. A three member arbitration panel has been constituted and the panel has issued a Procedural Order establishing dates and parameters for discovery and the arbitration hearing. In June 2009, the parties agreed in principle to terms of settlement of the matter and so informed the arbitration panel. The parties currently are finalizing documents reflecting the settlement terms. In June 2009, we accrued $1.6 million in additional purchase consideration in connection with the pending settlement of the GO arbitration.

On February 20, 2009, Arden Realty Limited Partnership ("Arden") filed a complaint in California State Superior Court for the County of San Diego against us alleging breach of two written lease agreements for commercial property. Arden seeks damages in the amount of $2.5 million and $1.4 million, respectively, for the alleged breaches, as well as interest, attorneys' fees, etc. In April 2009, we entered into a settlement and lease termination agreement with Arden, whereby Arden agreed to dismiss the complaint and terminate the lease agreements in exchange for a cash payment of $0.6 million in May 2009.

We are also currently involved in other legal proceedings in the ordinary course of our business operations. We estimate the range of liability related to pending litigation where the amount and range of loss can be estimated. We record our best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, we record the minimum estimated liability related to the claim. As additional information becomes available, we assess the potential liability related to our pending litigation and revise our estimates. As of June 27, 2009, other than the matters described above, we have not recorded any significant accruals for contingent liabilities associated with our legal proceedings based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time. Revisions to our estimate of the potential liability could materially impact future results of operations.

12. Guarantees and Indemnifications

We provide indemnifications of varying scope and size to certain customers against claims of intellectual property infringement made by third parties arising from the use of our products. We have also entered into indemnification agreements with our officers and directors. Although the maximum potential amount of future payments we could be required to make under these indemnifications is unlimited, to date we have not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. Additionally, we have insurance policies that, in most cases, would limit our exposure and enable us to recover a portion of any amounts paid. Therefore, we believe the estimated fair value of these agreements is minimal and likelihood of incurring an obligation is remote. Accordingly, we have not accrued any liabilities in connection with these indemnification obligations as of June 27, 2009.

13. Segment Information

Our business is currently organized in two reportable segments on the basis of products, services and strategic initiatives as follows:

- Multimedia – device-embedded multimedia software, media content management platforms, and content delivery services delivered through our PacketVideo subsidiary.
- Strategic Initiatives – manages our portfolio of worldwide licensed wireless spectrum assets.

We evaluate the performance of our segments based on revenues and loss from operations excluding depreciation and amortization. Corporate overhead expenses and other income and charges are not allocated to segments in our internal management reports because they are not considered in evaluating the segments' operating performance. Unallocated income and charges include investment income on corporate investments and interest expense related to the Senior Notes, Second Lien Notes

and Third Lien Notes and the change in the fair value of the embedded derivatives on the Second Lien Notes and Third Lien Notes, all of which were deemed not to be directly related to the businesses of the segments. We have no intersegment revenues.

Financial information for our continuing reportable segments for the three and six months ended June 27, 2009 and June 28, 2008 is as follows:

(in thousands)	**Multimedia**	**Strategic Initiatives**	**Other or Unallocated**	**Discontinued Operations**	**Consolidated**
For the Three Months Ended:					
June 27, 2009					
Revenues from external customers	$ 12,035	$ —	$ —	$ —	$ 12,035
Loss from operations	(3,708)	(1,706)	(9,105)	—	(14,519)
Significant non-cash and non-recurring items included in loss from operations above:					
Depreciation and amortization expense	1,459	2,066	13	—	3,538
Asset impairment charges	—	—	83	—	83
Restructuring charges (credits)	—	7	(717)	—	(710)
June 28, 2008					
Revenues from external customers	$ 16,563	$ —	$ —	$ —	$ 16,563
Loss from operations	(1,125)	(3,759)	(11,924)	—	(16,808)
Significant non-cash items included in loss from operations above:					
Depreciation and amortization expense	1,550	2,526	1,061	—	5,137
Restructuring charges	—	—	123	—	123
For the Six Months Ended:					
June 27, 2009					
Revenues from external customers	$ 28,946	$ 4	$ —	$ —	$ 28,950
Loss from operations	(4,524)	(20,499)	(19,453)	—	(44,476)
Significant non-cash and non-recurring items included in loss from operations above:					
Depreciation and amortization expense	2,942	4,517	129	—	7,588
Asset impairment charges	—	16,071	215	—	16,286
Restructuring charges	3	6	2,039	—	2,048
June 28, 2008					
Revenues from external customers	$ 31,113	$ —	$ —	$ —	$ 31,113
Loss from operations					