

MOTIVE INC
Form SC 14D9
July 16, 2008

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

SCHEDULE 14D-9

**SOLICITATION/RECOMMENDATION STATEMENT
UNDER SECTION 14(d)(4) OF THE SECURITIES EXCHANGE ACT OF 1934**

MOTIVE, INC.

(Name of Subject Company)

MOTIVE, INC.

(Name of Person Filing Statement)

COMMON STOCK, PAR VALUE \$.001 PER SHARE
(Title of Class of Securities)

61980V107

(CUSIP Number of Class of Securities)

Jack Greenberg
General Counsel and Secretary
Motive, Inc.
12515 Research Boulevard, Building 5
Austin, Texas 78759-2220
(512) 339-8335

*(Name, Address and Telephone Number of Person Authorized to
Receive Notice and Communications on Behalf of the Person(s) Filing Statement)*

With copies to each of:

Edgar Filing: MOTIVE INC - Form SC 14D9

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- Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.
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Item 1. Subject Company Information.

(a) Name and Address

The name of the subject company is Motive, Inc., a Delaware corporation (the Company). The address of the principal executive offices of the Company is 12515 Research Boulevard, Building 5, Austin, Texas 78759-2220. The telephone number of the Company at its principal executive offices is (512) 339-8335.

(b) Securities

The title of the class of equity securities to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with the Exhibits and Annexes hereto, this Statement) relates is the common stock, par value \$0.001 per share, of the Company (Common Stock). As of the close of business on June 30, 2008, 27,754,569 shares of Common Stock were outstanding.

Item 2. Identity and Background of Filing Person.

(a) Name and Address

The filing person is the Company. The Company's name, business address and business telephone number are set forth in Item 1(a) above.

(b) Tender Offer

This Statement relates to the offer by Magic Acquisition Subsidiary Inc. (Purchaser), a Delaware corporation and a wholly-owned subsidiary of Lucent Technologies Inc., a Delaware corporation (Parent) and a wholly-owned subsidiary of Alcatel Lucent, a *société anonyme* organized under the laws of the Republic of France (Alcatel Lucent), to purchase all of the issued and outstanding shares of Common Stock (each, a Share), for \$2.23 per Share, in cash to the seller (the Offer Price) without interest and less any applicable withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated July 16, 2008 (as amended or supplemented from time to time, the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal which, together with the Offer to Purchase, constitute the Offer). The Offer is further described in a Tender Offer Statement on Schedule TO (as amended or supplemented from time to time, the Schedule TO) filed by Alcatel Lucent, Parent and Purchaser with the Securities and Exchange Commission (the SEC) on July 16, 2008. A copy of each of the Offer to Purchase and the Letter of Transmittal are attached as Exhibit (a)(1)(A) and Exhibit (a)(1)(B), respectively, to the Schedule TO, and each is incorporated herein by reference.

The Offer is being made pursuant to the Agreement and Plan of Merger, dated as of June 16, 2008, by and among the Company, Parent and Purchaser (the Merger Agreement). The Merger Agreement provides that, among other things, the Offer is contingent upon the valid tender of a number of Shares equaling (x) not less than 17,639,096 Shares (the Minimum Condition), which represents approximately 58.3% of the issued and outstanding Shares (including for such purpose the 2.5 million Shares expected to be issued in connection with the previously announced settlement of the Company's securities class action lawsuit (the Settlement Shares)), or (y) if Purchaser lowers the Minimum Condition (as is permitted on a single occasion under the Merger Agreement), not less than 15,493,417 Shares, which represents approximately 51.2% of the issued and outstanding Shares (including for such purpose the Settlement Shares), plus the total number of Shares issued or to be issued between the date of the Merger Agreement and the acceptance for payment by Purchaser of Shares tendered in the Offer in response to certain elections to exercise options or warrants

to purchase Shares (the Lowered Minimum Condition).

Pursuant to the terms of the Merger Agreement, the Company also granted Purchaser, subject to certain conditions and limitations, an irrevocable option (the Top-Up Option), to be exercised, in whole or in part, on or prior to the 5th business day after completion of the Offer, to acquire a number of Shares (the Top-Up Option Shares) that, when added to the number of Shares owned by Parent, Purchaser and any of their respective wholly-owned subsidiaries at the time of the exercise of the Top-Up Option, constitutes (x) if the Minimum Condition is applicable, at least 90% of the number of Shares that will be issued and outstanding immediately after giving effect to the issuance of the Top-Up Option Shares on a fully diluted basis (including all Shares issuable under options and warrants to purchase Shares), or (y) if the Lowered Minimum Condition is applicable, at least 90% of the number of

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Shares that will be issued and outstanding upon acceptance for payment by Purchaser of Shares tendered in the Offer, including the Top-Up Option Shares, in either case at a price per Share equal to the Offer Price.

The Merger Agreement also provides that following completion of the Offer and, if necessary, the exercise of the Top-Up Option, the Company and Purchaser will complete a second-step merger (the Merger) through the short form procedures available under the Delaware General Corporation Law (the DGCL) without a meeting of the Company's stockholders, in which Purchaser will be merged with and into the Company, with the Company as the surviving corporation (such surviving corporation, the Surviving Corporation). At the effective time of the Merger (the Effective Time), each issued and outstanding share of the common stock, par value \$0.001 per share, of Purchaser will be converted into one fully paid and nonassessable share of common stock of the Surviving Corporation, all Shares that are owned by the Company, Parent, or Purchaser and any of their respective direct or indirect wholly-owned subsidiaries will be cancelled and retired and will cease to exist and all other issued and outstanding Shares (other than Dissenting Shares (as defined below)) will be converted into the right to receive the Offer Price, without interest thereon, less any required withholding taxes (the Merger Consideration). Shares held by stockholders who have properly demanded appraisal and complied with the provisions of the DGCL relating to dissenters' rights of appraisal (Dissenting Shares) will not be converted into a right to receive the Merger Consideration, unless such stockholder fails to perfect, withdraws or otherwise loses his, her or its right to appraisal.

At the Effective Time, each outstanding option to purchase shares of Common Stock issued under one of the Company's (or a predecessor's) stock option plans will be cancelled in exchange for the right to receive a single lump sum cash payment equal to the product of (i) the excess, if any, of the Merger Consideration over the per share exercise price of such stock option and (ii) the number of Shares issuable upon exercise of such stock option at the Effective Time, less any applicable tax or other withholdings. No consideration shall be payable in respect of any Company stock option for which the per share exercise price equals or exceeds the Merger Consideration and such Company stock option shall be cancelled and have no further force or effect. In addition, prior to the Effective Time, the Company will use its commercially reasonable efforts to cancel all outstanding warrants to purchase Shares in exchange for the right to receive a single lump sum cash payment to be paid as promptly as practicable after the Effective Time, equal to the product of (i) the excess, if any, of the Merger Consideration over the per share exercise price of such warrants and (ii) the total number of Shares for which such warrants may be exercised. No consideration shall be payable in respect of any such warrants for which the per share exercise price equals or exceeds the Merger Consideration and such warrants shall be cancelled and have no further force or effect.

A copy of the Merger Agreement is filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

Upon completion of the Merger, Purchaser intends to cause the Company to file a Form 15 with the SEC to suspend the Company's obligation to file reports under the Securities Exchange Act of 1934, as amended (the Exchange Act), and to terminate the registration of the Common Stock under the Exchange Act. In the event that the number of stockholders of the Company is sufficiently reduced as a result of the completion of the Offer, Purchaser may take this action upon the completion of the Offer rather than upon completion of the Merger.

As set forth in the Schedule TO, the principal executive offices of Parent and Purchaser are located at 600 Mountain Avenue, Murray Hill, New Jersey 07974.

The Company is making information relating to the Offer and the Merger available on the internet at <http://ir.motive.com>.

Item 3. *Past Contacts, Transactions, Negotiations and Agreements.*

Certain contracts, agreements, arrangements or understandings between the Company or its affiliates and (i) the Company's executive officers, directors or affiliates, or (ii) Parent, Purchaser or their respective executive officers, directors or affiliates are, except as noted below, described in the Information Statement that is attached hereto as Annex A and is incorporated herein by reference (the Information Statement), which is being furnished to the Company's stockholders in connection with Parent's right pursuant to the Merger Agreement to designate persons to the board of directors of the Company (the Board) after acquiring Shares pursuant to the Offer, pursuant to Rule 14f-1 under the Exchange Act. Except as described in this Statement (including in the Exhibits hereto and in Annex A hereto) or incorporated herein by reference, to the knowledge of the Company, as of the date

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of this Statement, there are no material agreements, arrangements or understandings or any actual or potential conflict of interests between the Company or its affiliates and (i) the Company's executive officers, directors or affiliates or (ii) Purchaser, Parent or their respective executive officers, directors or affiliates.

(a) Agreements, Arrangements or Understandings with Parent or Purchaser

The Merger Agreement

The summary of the material terms of the Merger Agreement set forth in Section 13 "The Merger Agreement" of the Offer to Purchase and the description of the conditions of the Offer contained in Section 15 "Conditions to Purchaser's Obligations" of the Offer to Purchase are incorporated by reference herein (the Offer to Purchase is filed as exhibit (a)(1)(A) to the Schedule TO).

The summary of the Merger Agreement contained in the Offer to Purchase is qualified in its entirety by reference to the Merger Agreement, a copy of which is filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

The Merger Agreement governs the contractual rights among the Company, Parent and Purchaser in relation to the Offer and the Merger. The Merger Agreement has been filed as an exhibit to this Statement to provide stockholders with information regarding the terms of the Merger Agreement and is not intended to modify or supplement any factual disclosures about the Company, Parent or Purchaser in the Company's public reports filed with the SEC. In particular, the Merger Agreement and this summary of terms are not intended to be, and should not be relied upon as, disclosure regarding any facts and circumstances relating to the Company, Parent or Purchaser. The representations and warranties contained in the Merger Agreement were made for the sole benefit of the other parties thereto and have been negotiated with the principal purpose of establishing the circumstances in which Purchaser may have the right not to consummate the Offer and Merger, or a party may have the right to terminate the Merger Agreement, including if the representations and warranties of another party prove to be untrue due to a change in circumstance or otherwise, and to allocate risk between the parties. Stockholders should not rely on the representations and warranties as a characterization of the actual state of facts as of the date of the Merger Agreement or as of the date of this Statement since they were modified by a confidential disclosure letter. The representations and warranties may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and are qualified by information set forth in the confidential disclosure letter.

Nondisclosure Agreement

On March 28, 2007, the Company and Alcatel Lucent entered into a nondisclosure agreement to facilitate the mutual sharing of information in order to allow the parties to evaluate a potential transaction. This summary of the nondisclosure agreement does not purport to be a complete description of the terms and conditions of the nondisclosure agreement and is qualified in its entirety by reference to the nondisclosure agreement, which is filed as Exhibit (e)(4) hereto and is incorporated herein by reference.

Exclusivity Letter

On April 24, 2008, the Company and Alcatel Lucent entered into a 60 day exclusivity letter whereby the Company agreed, for a period of 60 days, not to solicit any proposals from, enter into discussions with or execute agreements with any party other than Alcatel Lucent in connection with a proposed purchase of the Company. Pursuant to the exclusivity letter, Alcatel Lucent granted the Company the right to, at any time after 30 days following the execution of the exclusivity letter (i) request written confirmation from Alcatel Lucent that its proposed purchase price for the Company was \$67.8 million, subject to certain adjustments, and if Alcatel Lucent failed to issue such confirmation, provided the Company with the right to terminate the exclusivity letter without payment of any of Alcatel Lucent's

fees and expenses and (ii) terminate the exclusivity letter (subject to payment of the fees and expenses incurred by Alcatel Lucent solely in connection with its due diligence investigation, up to \$250,000) in the event the Board determined that such action was necessary or appropriate in, and would be consistent with, the exercise by the Board of its fiduciary duties. This summary of the exclusivity letter does not purport to be a complete description of the terms and conditions of the exclusivity letter and is qualified in its entirety by reference to the exclusivity letter, which is filed as Exhibit (e)(3) hereto and is incorporated herein by reference.

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(b) Agreements, Arrangements or Understandings with the Company's Executive Officers and Directors

Information Statement

Certain agreements, arrangements or understandings between the Company or its affiliates and certain of their directors, executive officers and affiliates are described in the Information Statement.

Interests of Certain Persons

In considering the recommendation of the Board to tender Shares in the Offer, stockholders should be aware that the Company's executive officers and directors have agreements or arrangements that may provide them with interests that may differ from, or be in addition to, those of stockholders generally. As described below, the directors and officers of the Company have certain indemnification rights post-Merger, the transactions contemplated by the Merger Agreement will constitute a change in control of the Company for purposes of the change in control employment agreements with executive officers that could entitle an executive officer to severance payments and other benefits. The Board was aware of these agreements and arrangements during its deliberations of the merits of the Merger Agreement and the transactions contemplated therein and in determining to make the recommendation set forth in this Statement.

Director and Officer Indemnification and Insurance

Parent will cause the Surviving Corporation to assume all indemnification obligations of the Company which now exist in favor of directors and officers of the Company. Parent will also cause the Surviving Corporation to indemnify current and former directors, officers and employees of the Company and its subsidiaries.

For six years after the consummation of the Merger, Parent must cause the Surviving Corporation to maintain in effect the Company's current director and officer liability insurance policy on terms which are no less favorable than those currently in effect, subject to a 275 percent cap on premiums and certain other conditions.

The foregoing summary of the indemnification of directors and officers and director and officer liability insurance does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

Management Arrangements with Parent

As of the date of this Statement, Parent is discussing the terms of future employment agreements with Anna Clepper, the Company's Vice President, Human Resources, Michael Fitzpatrick, the Company's Chief Financial Officer, and Richard Hanna, the Company's Chief Operating Officer, but, as of the date of this Statement, the terms of such employment agreements with Parent have not been finalized and there can be no assurance that such agreements will be reached. The discussions referenced above commenced after the Merger Agreement was executed.

Section 16 Matters

Prior to the Effective Time, the Company will take all such steps as may be required to cause any dispositions of Common Stock or options resulting from the Merger by each officer and director who is subject to the reporting requirements under Section 16(a) of the Exchange Act, to be exempt from liability under Rule 16b-3 promulgated under the Exchange Act.

(c)

Effect of the Offer and the Merger Agreement on Equity and Equity-Based Awards Granted under the Company's Stock Plans

Stock Options. Upon consummation of the Offer, a change in control will result under each of the Company's (or a predecessor's) stock option plans and, as Purchaser is not assuming any of the Company's stock options or stock option plans, all stock options issued under the Company's stock option plans will become fully vested at least 15 days prior to the Effective Time. At the Effective Time, each outstanding option to purchase shares of Common

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Stock issued under one of the Company's (or a predecessor's) stock option plans will be cancelled in exchange for the right to receive a single lump sum cash payment equal to the product of (i) the excess, if any, of the Merger Consideration over the per share exercise price of such stock option and (ii) the number of Shares issuable upon exercise of such stock option at the Effective Time, less any applicable tax or other withholdings. No consideration shall be payable in respect of any Company stock option for which the per share exercise price equals or exceeds the Merger Consideration and such Company stock option shall be cancelled and have no further force or effect.

Warrants. Prior to the Effective Time, the Company will use its commercially reasonable efforts to cancel all outstanding warrants to purchase Shares (the "Warrants") in exchange for the right to receive a single lump sum cash payment to be paid as promptly as practicable after the Effective Time, equal to the product of (i) the excess, if any, of the Merger Consideration over the per share exercise price of such Warrants and (ii) the total number of Shares for which such Warrants may be exercised. No consideration shall be payable in respect of any such Warrants for which the per share exercise price equals or exceeds the Merger Consideration and such Warrants shall be cancelled and have no further force or effect.

Restricted Common Shares. Upon consummation of the Offer, a change in control will result with respect to all of the Company's restricted stock agreements and, as Purchaser is not assuming any of the restricted stock agreements, all restricted stock issued under the Company's restricted stock agreements will vest in full at that time. However, it is expected that the Board will in the near term authorize the immediate vesting in full of all restricted stock, and the immediate termination of all restrictions thereon, in order to allow the holders thereof to tender such restricted stock in the Offer.

In addition to the amounts the Company's directors and officers will receive as consideration for their directly held shares of Common Stock in the Offer and the Merger, the following directors and executive officers will receive the payments set forth below based on the options and restricted stock held by such persons:

Director/Officer	Options	Restricted Stock
Alfred T. Mockett, Chairman of the Board, Chief Executive Officer	\$ 76,000	\$ 111,500
Richard Hanna, Chief Operating Officer	\$ 38,000	
Michael Fitzpatrick, Chief Financial Officer	\$ 38,000	
Jack Greenberg, General Counsel, Secretary	\$ 38,000	
Markus Remark, Senior Vice President, World Wide Services		
Anna Clepper, Vice President, Human Resources		
Thomas J. Meredith, Director	\$ 54,672	
Virginia Gambale, Director	\$ 33,171	
Michael J. Maples, Sr., Director	\$ 33,171	
	\$ 33,171	

David Sikora,
Director

Change in Control Agreements and Severance Payments. The Company currently has employment agreements with Ms. Clepper and Messrs. Mockett, Hanna, Fitzpatrick, Greenberg and Remark (each individually, an Executive Officer or collectively, the Executive Officers), all of which, except for the current employment agreement between Mr. Remark and a subsidiary of the Company, include post-employment severance and change in control benefits. Mr. Remark's current employment agreement does not provide for post-employment severance or change in control benefits, however, under German law and custom, Mr. Remark would receive severance payments from the Company on terms and in amounts consistent with what is customary for his position with the Company, such terms and amounts to be negotiated between him and the Company. Each Executive Officer, other

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than Mr. Remark, is eligible for severance benefits following the occurrence of a change in control (as defined in each employment agreement), if such Executive Officer's employment is terminated or if such Executive Officer resigns for good reason (as defined in each employment agreement).

The following table, based on a change in control having occurred as of June 30, 2008, shows the estimated payments and benefits that would be provided to each Executive Officer under his or her respective employment agreement following a change in control. For Mr. Mockett and Ms. Clepper, the actual accrued bonus amounts would be dependent on when in the year the change in control occurs and such amounts are payable only upon their termination or resignation. The accrued bonus numbers below have been calculated based on two fully completed quarters relative to the entire year. For Messrs. Hanna, Greenberg, and Fitzpatrick, the accrued bonus amount is not prorated but is for one year regardless of when the change in control occurs. The Retention Bonus column reflects the change in control acceleration of retention bonuses originally to be paid to the Executive Officers in 2008 thru 2010. See Retention Bonus Program below.

	Severance Payment (\$)	Accrued Bonus Payment (\$)	Retention Bonus Payment(1) (\$)	Total Change in Control Payments (\$)
Alfred T. Mockett(2)	350,000	175,000	429,667	954,667
Richard Hanna	137,500	165,000	300,767	603,267
Markus Remark	(3)	(3)	261,067	(3)
Jack Greenberg	112,500	112,500	204,500	429,500
Michael Fitzpatrick	112,500	112,500	204,500	429,500
Anna Clepper	107,500	32,250	183,017	322,767

(1) Included in this column is each Executive Officer's 2008 retention bonus grant, as follows: Mr. Mockett \$170,000; Richard Hanna \$119,000; Jack Greenberg \$85,000; Michael Fitzpatrick \$85,000; Markus Remark \$128,000; and Anna Clepper \$76,500. Also included is the value of the stock price appreciation from the 2008 retention bonus grant price of \$1.70 and \$1.50; for Alfred Mockett \$53,000; Richard Hanna \$37,100; Jack Greenberg \$26,500; Mike Fitzpatrick \$26,500; Markus Remark \$50,400; and Anna Clepper \$23,850.

(2) The Company is also required to pay Mr. Mockett's medical insurance for one year following termination of employment.

(3) Mr. Remark's current employment agreement with a subsidiary of the Company, dated September 18, 2003 (the Current Remark Employment Agreement), does not provide for any severance payments or accrued bonus payments. However, Mr. Remark would be entitled to severance payments and benefits in accordance with German law and custom, which payments and benefits are indeterminable as of the date of this Statement. Accordingly, the Company cannot determine the severance payment, accrued bonus payment or total change in control payments that Mr. Remark would have received if a change in control occurred as of June 30, 2008. In connection with Mr. Remark's May 2008 promotion to Senior Vice President, World Wide Services of the Company, the Company has proposed to enter into a new employment agreement with Mr. Remark in substantially the form attached as Exhibit (e)(18) (the Proposed Remark Employment Agreement), which has not been accepted by Mr. Remark as of the date of this Statement, but which would, upon execution, supersede the terms of the Current Remark Employment Agreement. Pursuant to the terms of the Proposed Remark

Employment Agreement, Mr. Remark would be eligible for severance benefits following the occurrence of a change in control (as defined in the Proposed Remark Employment Agreement), if his employment was terminated or if he resigned for good reason (as defined in the Proposed Remark Employment Agreement). Pursuant to the terms of the Proposed Remark Employment Agreement, if a change in control occurred as of June 30, 2008, Mr. Remark would have received \$125,000 in severance payment, an estimated \$62,500 in accrued bonus payment (calculated based on two fully completed quarters relative to the entire year, however, the actual accrued bonus amounts would be dependent on when in the year the change in control occurs and such amounts are payable only upon his termination or resignation) and an estimated \$448,567 of total change of control payments (including his \$261,067 retention bonus payment). Additionally, under the Proposed Remark Employment Agreement, the Company would be responsible for the expense to repatriate Mr. Remark

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to his home country if he was terminated by the Company. In the event that Mr. Remark does not sign the Proposed Remark Employment Agreement or an agreement in substantially the form thereof, the Company expects that the total amount payable to Mr. Remark in connection with a change in control of the Company would be less than or equal to the \$448,567 total change in control payments described herein. The summaries of the Current Remark Employment Agreement and the Proposed Remark Employment Agreement contained herein are qualified in their entirety by reference to the original transaction documents, copies of which are filed as Exhibits (e)(17) and (e)(18) hereto and are incorporated herein by reference.

Pursuant to the Merger Agreement, upon a change in control, all of the then unvested restricted stock then held by the Executive Officers would be immediately vested in full. Pursuant to the Merger Agreement all unvested stock options will vest (subject to the consummation of the Merger) at least 15 days prior to the Effective Time. If a change in control had occurred on June 30, 2008, the following stock options and restricted stock would have been subject to such accelerated vesting:

Restricted Stock/Options	Alfred Mockett	Richard Hanna	Markus Remark	Jack Greenberg	Mike Fitzpatrick	Anna Clepper
Restricted Stock	50,000					
Options by Strike Price:						
\$1.85	133,334	66,667(1)		66,667(1)	66,667(1)	
\$2.30					41,667(2)	
\$2.65		66,667(2)		41,667(2)		
\$3.40	187,500(2)					
\$8.69			2,500			
\$10.98			1,875			

- (1) Pursuant to the applicable option agreement, in the case of a change in control, these unvested stock options will not immediately vest unless the Executive Officer's employment is terminated as well. However, pursuant to the Merger Agreement all unvested stock options will vest (subject to the consummation of the Merger) at least 15 days prior to the Effective Time.
- (2) Pursuant to Stock Option Termination Agreements dated June 16, 2008, effective upon consummation of the Offer, these options will be cancelled.

Retention Bonuses. Pursuant to the Company's Key Employee Incentive Bonus Plan, the Company has awarded retention bonuses (Retention Bonuses) to certain key employees of the Company, including the Executive Officers. The Retention Bonuses are cash awards which vest in accordance with the vesting schedules provided in each participant's award agreement. In addition, the Award Agreements for the Executive Officers provide for a cash payment (a Change in Control Premium Amount) with respect to any Retention Bonus that has not yet fully vested at the time of a change in control. The Change in Control Premium Amount for any participant is equal to the product of the participant's Change in Control Premium (which equals the excess, if any, of the fair market value of a share of Common Stock on the last trading day before consummation of the change in control over the fair market value of a share of Common Stock on the participant's date of award of the Retention Bonus) and the quotient obtained by dividing (i) the original dollar amount of the participant's Retention Bonus by (ii) the fair market value of a share of Common Stock on the date of the award of the Retention Bonus. The Change in Control Premium Amount is to be paid within 10 days following the consummation of the change in control. The vesting of a participant's award will be accelerated in connection with a change in control of the Company if either (i) the successor entity (or a parent or

subsidiary of such successor entity) does not assume the award or (ii) such participant's employment is terminated by the Company or successor entity, other than for cause, within 12 months following the change in control (except in the case where the participant is simultaneously re-employed by the Company or an affiliate of the Company). In order for a participant to be eligible to receive payment pursuant to the Retention Bonus, such participant must have been continuously employed with the Company from the date of the award through the date of payment, except (i) where the vesting of a participant's award is accelerated due to a termination of employment by the Company or a successor entity, other than for cause, following a change in control, as described above, or (ii) where the participant's employment with the Company is terminated due to death

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or disability following the vesting of an award but prior to the payment thereof. In addition, the Company, in its sole discretion, may convert all of the unvested portion of any Retention Bonus to a replacement restricted stock unit award on the terms and subject to the conditions of the Key Employee Incentive Bonus Plan.

The Company has granted Retention Bonuses pursuant to the Key Employee Incentive Bonus Plan to the Executive Officers as described below:

Name	Aggregate Amount of Retention Bonus (\$)
Alfred T. Mockett	429,667
Richard Hanna	300,767
Markus Remark	261,067
Jack Greenberg	204,500
Michael Fitzpatrick	204,500
Anna Clepper	183,017

Each of these Retention Bonuses vests in three equal annual installments. However, upon a change in control of the Company, in certain situations (as described above), the vesting of the Retention Bonuses will be accelerated.

Contingent Retention Bonus Program. The Company has established a contingent retention program that consists of the implementation of retention bonuses for key individual contributors. The plan provides for a cash bonus payable March 31, 2009, with the only condition for payment being continuous employment through that date. This timing was selected to enable a one quarter transition period following the close of a transaction, during which time Purchaser can implement its own retention program(s) as it chooses. No Executive Officers are participating in this contingent retention program.

Employees. For a period of twelve months after the Effective Time, the employees of the Company immediately prior to the Effective Time that continue as employees of Parent, the Surviving Corporation or their respective subsidiaries will be provided with health, welfare and retirement benefits that are no less favorable, in the aggregate, than those provided by the Company and its subsidiaries immediately prior to the Effective Time.

Extended Severance Benefit. The Company has established an extended severance benefit to be offered to all employees (other than those employees employed in India or who currently have a three-month or greater severance benefit). This benefit will provide that, in the event of their involuntary termination not for cause, each such employees will receive a three-month severance and continuation of the Company's insurance contribution for three months. This benefit will not apply to terminations after December 31, 2008.

Item 4. *The Solicitation or Recommendation.***(a) Recommendation of the Board**

The Board, at meetings held on June 11, 2008 and June 16, 2008, among other things, (1) approved the Merger Agreement, the terms of the Offer, the Merger and the other transactions contemplated under the Merger Agreement, (2) determined that the Merger Agreement and the transactions contemplated therein, including the Offer and the Merger, are advisable and in the best interests of the Company and its stockholders, (3) determined that the

consideration to be paid to the stockholders of the Company in the Offer and the Merger is fair to, and in the best interests of, those stockholders, (4) approved the Merger Agreement and the transactions contemplated thereby, for purposes of Section 203 of the DGCL, (5) determined that, if required under the DGCL, the Merger Agreement and the Merger be submitted to a vote of the stockholders in accordance with the DGCL, (6) elected that the Offer and the Merger, to the extent of the Board's power and authority and to the extent permitted by law, not be subject to any takeover laws that may be applicable to Merger Agreement and the transactions contemplated thereby and (7) recommended that the stockholders accept the Offer and tender their Shares in the Offer.

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(b) Background of the Transaction

For purposes of this Item 4, references to Alcatel Lucent, unless otherwise specified, are to Parent, Purchaser and Alcatel Lucent.

In April 2005, Alcatel Lucent (then known as Alcatel) and the Company entered into a joint marketing and development agreement for remote management of home networking devices. As a result of such commercial relationship, Alcatel Lucent is both a joint development partner for certain of the Company's products, as well as a worldwide distribution partner for certain of the Company's products and services. The approximate amount of aggregate revenue to the Company resulting from Alcatel Lucent's distribution of these products was \$6.4 million as of December 31, 2007.

In the context of this commercial relationship, there has been regular and ongoing contact between the Company and Alcatel Lucent, during which the parties, from time to time, engaged in preliminary discussions concerning Alcatel Lucent's potential acquisition of, investment in or additional commercial relationship with the Company.

In March 2007, Alcatel Lucent executed a revised confidentiality and non-disclosure agreement with the Company, replacing an earlier agreement from January 19, 2006 in connection with the joint marketing and development program. During April through August 2007, representatives of the Company and Alcatel Lucent held preliminary discussions surrounding a potential acquisition of the Company by Alcatel Lucent. Such discussions did not prove fruitful and were subsequently terminated. Such discussions did not lead to a definitive agreement.

On November 6, 2007, the Company announced that it had engaged Thomas Weisel Partners LLC (Thomas Weisel Partners) to assist the Company in evaluating strategic alternatives to maximize stockholder value, including a possible sale or other business combination transaction.

As part of its evaluation of strategic alternatives for the Company, representatives of Thomas Weisel Partners contacted potential bidders about a possible acquisition of the Company, and certain of such potential bidders executed confidentiality and non-disclosure agreements. Thirty-four potential bidders were contacted (or made inbound contacts) and management presentations were made to 10 potential bidders.

On November 16, 2007, representatives of Thomas Weisel Partners contacted representatives of Alcatel Lucent to advise Alcatel Lucent that the Company was considering a possible sale of the Company and Alcatel Lucent expressed an interest in participating in a possible sale of the Company.

On December 3, 2007, representatives of Alcatel Lucent attended a management presentation conducted by representatives of the Company and Thomas Weisel Partners.

Throughout January 2008, Alcatel Lucent and other potential bidders conducted preliminary due diligence investigations of the Company, which also included meetings with certain members of senior management of the Company.

On January 29, 2008, Alcatel Lucent submitted a non-binding indication of interest to acquire the Company for approximately \$90 million. The non-binding indication of interest was conditioned upon, among other things, Alcatel Lucent completing its ongoing due diligence investigation of the Company, the settlement of the Company's securities class action litigation and shareholder derivative litigation becoming final, non-appealable and fully funded, delivery of certain audited financial statements and resolution (or the reasonable prospect for resolution) of the investigation into the Company being conducted by the SEC.

On February 4, 2008, Alcatel Lucent was notified by Thomas Weisel Partners that it had not been selected to proceed into the second phase of the bidding process. At that time two other potential bidders were permitted to continue in the process.

From February 5, 2008 through February 14, 2008, representatives of Alcatel Lucent continued to express its interest to the Company to participate in the second phase of the bidding process. As a result of such discussions, on February 15, 2008, Alcatel Lucent was added to the second phase of the bidding process.

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On February 29, 2008, Paul, Weiss, Rifkind, Wharton & Garrison LLP (Paul Weiss), transaction counsel to the Company, circulated a draft merger agreement to the potential bidders that participated in the second phase of the bidding process, including Alcatel Lucent. Concurrently therewith, Baker Botts L.L.P. (Baker Botts), corporate counsel to the Company, circulated a draft disclosure letter relating to the then current draft of the merger agreement.

On March 18, 2008, Alcatel Lucent submitted a revised bid to purchase the Company for a per share purchase price of \$2.23, subject to certain conditions, which conditions were substantially similar to those contained in the indication of interest submitted by Alcatel Lucent on January 29, 2008 discussed above.

On March 25, 2008, representatives of Thomas Weisel Partners informed Alcatel Lucent that its bid had been rejected. Alcatel Lucent was informed that its offer price was equal to or below the proposals of other bidders and that such other proposals contained proposed closing conditions that might be more easily attained by the Company.

On March 27, 2008, the Board determined that a bid by another bidder was perceived to be less conditional than Alcatel Lucent's bid and on March 28, 2008 the Company entered into an exclusivity agreement with such other bidder. On April 9, 2008, that exclusivity agreement was terminated as the parties could not reach agreement on terms for a definitive agreement.

On April 11, 2008, representatives of the Company and Alcatel Lucent discussed and agreed to convene certain meetings in order to re-engage discussions on the potential purchase of the Company by Alcatel Lucent.

On April 13, 2008, the Board met to discuss the status of discussions with Alcatel Lucent and appropriate next steps.

From April 15 through April 18, 2008, representatives of the Company's management met with representatives of Alcatel Lucent and Bryan Cave LLP (Bryan Cave), legal counsel to Alcatel Lucent, to discuss different structures with respect to a potential business combination between the Company and Alcatel Lucent, including the Company's proposal of a near-term equity investment by Alcatel Lucent.

Between April 16, 2008 and April 24, 2008, representatives of the Company and Alcatel Lucent negotiated the terms of an exclusivity letter whereby the Company agreed, for a period of 60 days, not to solicit any proposals from, enter into discussions with or execute agreements with any party other than Alcatel Lucent in connection with a proposed purchase of the Company. Pursuant to the exclusivity letter, which was executed on April 24, 2008, Alcatel Lucent granted the Company the right to, at any time after 30 days following the execution of the exclusivity letter (i) request written confirmation from Alcatel Lucent that its proposed purchase price for the Company was \$67.8 million, subject to certain adjustments, and if Alcatel Lucent failed to issue such confirmation, provided the Company with the right to terminate the exclusivity letter without payment of any of Alcatel Lucent's fees and expenses and (ii) terminate the exclusivity letter (subject to payment of the fees and expenses incurred by Alcatel Lucent solely in connection with its due diligence investigation, up to \$250,000) in the event the Board determined that such action was necessary or appropriate in, and would be consistent with, the exercise by the Board of its fiduciary duties. Following the execution of the exclusivity letter, Alcatel Lucent continued its due diligence investigation of the Company until the execution of the Merger Agreement.

On April 30, 2008, Paul Weiss distributed a revised draft merger agreement to representatives of Alcatel Lucent and Bryan Cave. From April 30, 2008 until the execution of the Merger Agreement, the parties and their respective legal counsel exchanged drafts of the merger agreement and the related disclosure letter and held extensive discussions and negotiations relating to the terms and conditions of the draft merger agreement and the information included in the disclosure letter.

On May 6, 2008, Bryan Cave delivered to Paul Weiss a list of significant issues for discussion concerning the draft merger agreement, which issues related principally to: (i) the scope of certain representations and warranties to be made by the Company, (ii) covenants to be given by the Company in respect of its business between the execution of a definitive merger agreement and the closing of the merger, (iii) termination events and the payment of a termination fee or reimbursement of transaction expenses by the Company, and (iv) conditions to the completion by Alcatel Lucent of a tender offer for the Company's Shares. On May 7, 2008, representatives of Paul Weiss and

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Bryan Cave participated in a conference call to discuss the issues list previously provided by Bryan Cave concerning the draft merger agreement.

On May 9, 2008, Alcatel Lucent informed the Company that it had rejected the Company's aforementioned near-term equity investment proposal, and Alcatel Lucent submitted to the Company, in lieu thereof, a term sheet for a secured loan facility between Alcatel Lucent and the Company.

On May 13, 2008, representatives of Alcatel Lucent and the Company discussed by telephone significant issues regarding the transaction. In particular, the Company rejected Alcatel Lucent's secured loan facility proposal, discussed the proposed tender offer conditions in the draft Merger Agreement, and requested an update on the status of Alcatel Lucent's due diligence investigation.

Over the next two weeks, representatives of the Company, Alcatel Lucent, Paul Weiss, Baker Botts and Bryan Cave engaged in various discussions and negotiations regarding the terms and conditions of the proposed transaction. Such discussions related principally to issues surrounding the covenants to be given by the Company in respect of the conduct of its business between the execution of a definitive merger agreement and the closing of the merger, termination events and the payment of a termination fee or reimbursement of transactions expenses by the Company, and conditions to the completion by Alcatel Lucent of a tender offer for the Company's Shares.

On May 29, 2008, following a request by the Company in accordance with the exclusivity letter discussed above, Alcatel Lucent confirmed in writing to the Company that the proposed purchase price for the Company remained \$67.8 million, subject to certain permitted adjustments.

Over the next several days, representatives of the Company and Alcatel Lucent, including their respective legal counsel, engaged in discussions and intensive negotiations to finalize the terms and conditions of the merger agreement.

From June 10, 2008, to June 12, 2008, representatives of Alcatel Lucent met with representatives of the Company at the Company's headquarters in Austin, Texas to discuss human resources and certain other issues.

On June 11, 2008, the Board met with its advisers and management to review the status of negotiations and the proposed transaction with Alcatel Lucent. At such meeting, the Board,