

NextWave Wireless Inc.  
Form DEFA14A  
August 06, 2012

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

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

**Date of Report (Date of Earliest Event Reported): August 1, 2012**

**NEXTWAVE WIRELESS INC.**

(Exact Name of Registrant as Specified in its Charter)

**DELAWARE**  
(State of Other Jurisdiction of  
Incorporation or Organization)

**001-33226**  
(Commission  
File Number)

**20-5361360**  
(I.R.S. Employer  
Identification Number)

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12264 El Camino Real, Suite 305

San Diego, CA 92130

(Address of Principal Executive Offices) (Zip code)

(619) 573-1578

(Registrant's Telephone Number, Including Area Code)

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act

**Item 1.01. Entry into a Material Definitive Agreement.  
Merger Agreement**

NextWave Wireless Inc. (the Company or NextWave ) entered into an Agreement and Plan of Merger, dated August 1, 2012 (the Merger Agreement ), with AT&T Inc., a Delaware corporation ( AT&T ), and Rodeo Acquisition Sub Inc. ( Merger Sub ), that provides for the acquisition of the Company by AT&T by means of a merger (the Merger ) of Merger Sub with and into the Company. As a result of the Merger, the Company will become a wholly owned subsidiary of AT&T. The Merger Agreement provides that, upon consummation of the Merger, each share of common stock, par value \$.007 per share, of the Company (the Company Common Stock ), issued and outstanding immediately prior to the effective time of the Merger (other than shares as to which statutory appraisal rights are perfected) will be converted into the right to receive (i) \$1.00 per share in cash and (ii) a non-transferable contingent payment right ( CPR ) representing a pro rata interest in an amount of up to \$25 million held in escrow, which may be reduced in respect of indemnification obligations and other amounts payable to AT&T as described below under the heading Contingent Payment Rights, Escrow Fund, Adjustment Amounts and Indemnification of AT&T . The Merger and the transactions contemplated thereby were unanimously approved by the Independent Committee of the Company's Board of Directors and its Board of Directors.

Pursuant to the Merger Agreement, the Company makes customary representations and warranties to AT&T, including, among other things, representations and warranties regarding: (i) qualification and organization of the Company; (ii) capitalization of the Company; (iii) indebtedness of the Company, (iv) corporate authority of the Company to enter into the Merger Agreement and consummate the contemplated transactions; (v) financial statements of the Company; (vi) absence of undisclosed liabilities and compliance with applicable law and permit obligations; (vii) title to the Wireless Communication Services ( WCS ) and Advanced Wireless Services ( AWS ) wireless spectrum licenses and ability of the Company to transfer other assets without consent; (viii) absence of encumbrances on the WCS and AWS wireless spectrum assets; (ix) absence of litigation and claims relating to wireless spectrum licenses; (x) compliance with communications regulatory authorities including the Federal Communications Commission ( FCC ); (xi) arrangements with other spectrum licensees regarding interference; (xii) employee benefits plans; (xiii) absence of material changes to the Company's business since March 31, 2012, the date of the Company's most recently publicly filed financial statements; (xiv) taxes; (xv) intellectual property; (xvi) network equipment; (xvii) the fairness opinion delivered to the Company; (xviii) the required vote of stockholders of the Company to approve the Merger Agreement; (xix) certain contracts of the Company; (xx) compliance with anti-takeover statutes; (xxi) transactions with affiliates; (xxii) insurance obligations; (xxiii) environmental regulatory compliance; and (xxiv) absence of finders and brokers.

Prior to the closing date of the Merger (the Closing Date ), the Company agrees to operate its business in the ordinary course and is restricted from taking certain actions without obtaining the prior consent of AT&T (which may not be unreasonably withheld, delayed or conditioned). The Merger Agreement contemplates that prior to the effective time of the Merger, the Company will form a new holding company for its assets other than its WCS and AWS wireless spectrum licenses and other assets related exclusively thereto ( NextWave Holdco ) and immediately prior to the closing of the Merger, transfer 100% of the equity in NextWave Holdco to Third Lien Holders (as defined below) in partial redemption of the Third Lien Notes, as more fully described below. In addition, at least ten business days prior to the Closing Date, the Company is required to deliver an estimate of its unrestricted cash which relates solely to the WCS and AWS wireless spectrum licenses and all balance sheet liabilities of the Company, which items will be components in the purchase price to be paid by AT&T for the Third Lien Notes (as defined below) pursuant to the Third Lien NPA (as defined below). AT&T has certain approval rights over such balance sheet calculation.

Consummation of the Merger is subject to certain conditions, including stockholder approval, performance of covenants in all material respects and the continued accuracy of the Company's representations and warranties, except as would not reasonably be expected to have a Material Adverse Effect, as defined in the Merger Agreement, except for certain fundamental representations which must be true and correct in all material respects. Additional conditions include that:

all required regulatory approvals, including receipt of the requisite consent from the FCC, must be obtained without the imposition of any conditions that affect the operations or assets of AT&T or the operations or assets of the Company, subject to exceptions for items which are not material in relation to the aggregate purchase price paid by AT&T;

none of the Company's U.S. WCS or AWS wireless spectrum licenses will have been lost, revoked, canceled, terminated, suspended, not renewed or forfeited or awarded by the FCC to a competing party;

there is an absence of pending or threatened governmental litigation, or third party litigation challenging the transaction that would reasonably be expected to have a Material Adverse Effect;

the Forbearance Agreement entered into by the Company and the Holders (as defined below) described below under the heading Forbearance Agreement must remain in full force and effect and the Holders must have performed in all material respects their obligations and covenants under the Note Purchase Agreements described below; and

the Company shall have redeemed all of its 16% Third Lien Subordinated Secured Convertible Notes due 2013 (the Third Lien Notes), other than those acquired by AT&T on the Closing Date pursuant to the Note Purchase Agreements described below, in exchange for 100% of the equity of NextWave Holdco.

The Merger Agreement prohibits the Company from soliciting or encouraging competing acquisition proposals. However, the Company may, on the terms and subject to the conditions set forth in the Merger Agreement, provide information to, and negotiate with, a third party that makes an unsolicited acquisition proposal that the Company's board of directors (or the Independent Committee thereof) determines constitutes or would reasonably be expected to result in a Company Superior Proposal (as defined in the Merger Agreement). The Company can also terminate the Merger Agreement to enter into a definitive agreement with respect to such a Company Superior Proposal, subject to compliance with the terms of the Merger Agreement, including the payment of a termination fee as described below.

The Merger Agreement will terminate automatically if the Merger has not occurred on or prior to July 31, 2013 (the Termination Date). The Termination Date may be extended for up to two three-month periods at the option of AT&T if requisite regulatory approvals have not been obtained. In addition, AT&T can terminate the Merger Agreement if, among other things:

the Company's proxy statement is not filed with the Securities and Exchange Commission within ten business days after the date of the Merger Agreement (a Proxy Statement Filing Termination Event);

any U.S. WCS or AWS spectrum asset of the Company is awarded by the FCC to any competing party or otherwise forfeited;

a Material Adverse Effect shall have occurred and be continuing; or

the Debt Documents (as defined in the Merger Agreement and contemplated by the Forbearance Agreement described below under the heading Forbearance Agreement) are not executed by the Company and the Holders party thereto within ten business days following the date of the Merger Agreement to the reasonable satisfaction of AT&T.

The Merger Agreement provides that, upon termination of the Merger Agreement under specified circumstances, the Company will pay AT&T a termination payment of \$5 million, including if:

the Merger Agreement is automatically terminated because the effective time does not occur prior to Termination Date or is terminated by AT&T due to a willful breach by the Company and prior to such termination an alternative proposal for the acquisition of the Company has been made and not withdrawn at least twenty business days prior to such termination or rejected affirmatively by the Company and the Company enters into or completes an alternative transaction meeting criteria set forth in the Merger Agreement within eighteen months of the termination of the Merger Agreement; or

the Merger Agreement is terminated by AT&T due to a Proxy Statement Filing Termination Event on or after the fifteenth business day following the date of the Merger Agreement and the Company enters into or completes an alternative transaction meeting criteria set forth in the Merger Agreement within eighteen months of the termination of the Merger Agreement.

If the Merger Agreement is terminated by the Company in connection with the entry into a definitive transaction agreement contemplating a Company Superior Proposal, the potential acquiror must pay the \$5 million termination payment to AT&T as a condition to entering into the definitive transaction agreement.

In addition, under the Third Lien NPA, the holders of the Third Lien Notes (the Third Lien Holders) have agreed to pay a termination payment to AT&T in certain circumstances involving the Company entering into or completing an alternative transaction within eighteen months of the termination of the Merger Agreement, equal to the lesser of \$35 million and the difference between the fair market value of the proceeds received by the Third Lien Holders in such alternative transaction and the fair market value of the proceeds that would have been received under the Third Lien NPA.

The foregoing is a summary of the material terms of the Merger Agreement (other than the immediately preceding reference to the Third Lien NPA). The summary does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement. Investors are encouraged to review the entire text of the Merger Agreement, a copy of which is filed as Exhibit 2.1 to this report and incorporated herein by reference.

The agreements attached hereto (including any exhibits to such agreements), which are being filed to provide investors with information regarding their terms, contain various representations, warranties and covenants of each of the parties thereto. They are not intended to provide any factual information about any of the parties thereto. The assertions embodied in those representations, warranties and covenants were made for purposes of each of the agreements, solely for the benefit of the parties thereto, and are subject to qualifications and limitations agreed by the parties in connection with negotiating the terms of each of the agreements (including qualification by disclosures that are not necessarily reflected in the agreements). In addition, certain representations and warranties were made as of a specific date, may be subject to a contractual standard of materiality different from what a stockholder might view as material, or may have been made for purposes of allocating contractual risk among the parties rather than establishing matters as facts. Security holders are not third-party beneficiaries under the agreements and should not view the representations, warranties or covenants in the agreements (or any description thereof) as disclosures with respect to the actual state of facts concerning the business, operations or condition of any of the parties to the agreements and should not rely on them as such. In addition, information in any such representations, warranties or covenants may change after the dates covered by such provisions, which subsequent information may or may not be fully reflected in the public disclosures of the parties. In any event, investors should read the agreements together with the other information concerning the Company contained in reports and statements that the Company files with the Securities and Exchange Commission.

#### **Contingent Payment Rights, Escrow Fund, Adjustment Amounts and Indemnification of AT&T**

At the time of closing of the Merger, AT&T, a stockholders representative appointed by the Company (the Stockholders Representative ) and a rights agent (the Rights Agent ) will enter into a Contingent Payment Rights Agreement (the CPR Agreement ), the form of which is attached to the Merger Agreement as Exhibit B thereto. The CPR Agreement will provide for the terms of the CPRs included as part of the merger consideration.

Each CPR provides the Company's stockholders with a pro rata residual interest in an amount up to \$25 million, representing up to approximately \$0.95 per share, which may be released from a \$50 million escrow fund to be funded on the Closing Date with (i) a \$25 million payment from AT&T pursuant to the Merger Agreement and (ii) \$25 million of the price paid for the Third Lien Notes pursuant to the Third Lien NPA. The escrow fund is subject to reduction to satisfy indemnification rights held by AT&T in respect of losses arising from, among other things:

any breaches of representations or warranties by the Company under the Merger Agreement (and for purposes of determining both the occurrence of a breach and the amount of a loss, materiality qualifiers and in certain instances knowledge qualifiers will be disregarded);

any pre-closing breaches by the Company of covenants contained in the Merger Agreement;

any payments made to former stockholders of the Company as a result of demand or appraisal rights under Delaware law;

any demands, requests or claims for indemnification or indemnification-related expense advancement or reimbursement made by any current or future director, partner, manager, officer, employee, representative or agent of the Company under the Company's organizational documents or otherwise;

any claims by former stockholders of the Company with respect to the determination by the Company to enter into the Merger Agreement, the allocation of the merger consideration, the allocation of the Closing Date Total Consideration (as defined in the Merger Agreement) or any transfer of assets of the Company prior to the Closing Date as permitted by the Merger Agreement;

certain pre-closing liabilities listed on the Disclosure Schedules to the Merger Agreement;

any tax liability of the Company relating to the transfer of NextWave Holdco to the Third Lien Holders;

any amounts owing to the Rights Agent or the escrow agent in connection with the CPR Agreement and the escrow agreement to be entered into pursuant to the Merger Agreement and the Third Lien NPA, respectively; and

any liability attributable to NextWave Holdco other than liabilities exclusively related to the WCS and AWS assets.

In addition, AT&T will receive payment from the escrow fund in the amount of any negative post-closing adjustment amounts provided for under the Third Lien NPA in respect of (1) a portion of alternative minimum tax liabilities with respect to the transactions contemplated by the Merger Agreement, including the transfer of NextWave Holdco to the Third Lien Holders, and (2) balance sheet liabilities of the Company (other than liabilities attributable to the Notes), subject to certain exclusions, in excess of unrestricted cash.

The Third Lien Holders will be obligated to contribute additional amounts to the escrow fund in the amount of claims for (a) indemnification relating to liabilities attributable to NextWave Holdco and its subsidiaries, (b) indemnification relating to tax liabilities incurred by the Company relating to the transfer of NextWave Holdco to the Third Lien Holders, (c) any amount by which the Closing Date liabilities of the Company net of unrestricted cash exceed amounts estimated at closing and (d) any amount by which the alternative minimum tax incurred by the Company related to the transactions contemplated by the Merger Agreement exceed amounts estimated at closing. The additional contributions paid under clauses (a) (except with respect to liabilities arising from the post-closing operation of NextWave Holdco) and (c) are referred to as Additional Amounts which increase the payment priority of the Third Lien Holders with respect to releases from the escrow fund.

The first release from the escrow fund, if any, will be made on the first anniversary of the Closing Date, in an amount equal to 75% of the escrow fund then remaining and not subject to any reserves for pending claims (the First Release Amount), and shall be delivered (a) first, to the Third Lien Holders in an amount equal to the lesser of (i) the First Release Amount or (ii) \$25 million plus the Additional Amount; and (b) second, to the Rights Agent for the benefit of the CPRs, the balance of the First Release Amount. The second release from the escrow fund, if any, will be made on the second anniversary of the closing of the Merger, in an amount equal to the balance of the escrow fund then remaining and not subject to any reserves for pending claims (the Second Release Amount), and shall be delivered (a) first, to the Third Lien Holders, in an amount equal to the lesser of (i) the Second Release Amount and (ii) \$25 million plus the Additional Amount minus the amount released to the Third Lien Holders with respect to the First Release Amount, (b) second, to the Rights Agent for the benefit of the CPRs, the lesser of (i) the balance of the Second Release Amount and (ii) \$25 million minus the amount released to the Rights Agent for the benefit of the CPRs with respect to the First Release Amount; and (c) third, the balance, if any, to the Third Lien Holders. Thereafter, any amounts then remaining in the escrow fund in excess of any reserves maintained by the escrow agent will be delivered first, to the Third Lien Holders until they have received an aggregate amount equal to \$25 million plus the Additional Amount; second, to the Rights Agent for the benefit of the CPRs until it has received an aggregate of \$25 million from the escrow fund; and third, the balance of such amount to the Third Lien Holders.

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The CPRs will not be transferable, except in the limited circumstances specified in the CPR Agreement.

### **Forbearance Agreement**

On August 1, 2012, the Company and its wholly owned subsidiary NextWave Wireless LLC (the Issuer ), and certain subsidiary guarantors entered into a Forbearance Agreement (the Forbearance Agreement ) with (i) the holders of the Issuer's Senior Secured Notes due 2012 (such holders, the First Lien Holders ; such notes, the First Lien Notes ) issued under the Purchase Agreement, dated as of July 17, 2006, as amended (the First Lien Purchase Agreement ), (ii) the holders of the Issuer's Senior-Subordinated Secured Second Lien Notes due 2013 (such holders, the Second Lien Holders and, collectively with the First Lien Holders and the Third Lien Holders, the Holder ; such notes, the Second Lien Notes and together with the First Lien Notes and the Third Lien Notes, the Notes ) issued under the Second Lien Subordinated Note Purchase Agreement, dated as of October 19, 2008, as amended (the Second Lien Purchase Agreement ), and (iii) the Third Lien Holders issued under the Third Lien Subordinated Exchange Note Exchange Agreement, dated as of October 19, 2008, as amended (the Third Lien Exchange Agreement ) and together with the First Lien Purchase Agreement and the Second Lien Purchase Agreement, the Note Agreements ).

Pursuant to the Forbearance Agreement, each Holder has agreed, and directed The Bank of New York Mellon, as collateral agent under each of the Note Agreements (the Collateral Agent ), to temporarily forbear from exercising their respective rights and remedies in connection with potential defaults and events of default that may occur prior to the Forbearance Termination Date (as defined below). The occurrence of any Event of Default under the Note Agreements would, in the absence of the Forbearance Agreement, entitle the Holders to accrue additional default interest at a rate of 2% per annum, to accelerate the maturity of each respective series of Notes upon notice from the Holders of at least 51% of the outstanding principal amount of such series and to take action to foreclose on NextWave's wireless spectrum assets, or the stock of NextWave's subsidiaries which own such wireless spectrum. If the Forbearance Agreement is terminated without completion of the contemplated transactions, the Holders reserve the right to accrue default interest retroactively for the term of the Forbearance Agreement, and will have the right to pursue all remedies under the Note Purchase Agreements.

In connection with the Forbearance Agreement, the Issuer has agreed to consummate a series of transactions as described in detail below under the heading NextWave Holdco Transaction. The Forbearance Agreement will terminate on the earlier of (i) the consummation of the Merger, (ii) sixty (60) days after the termination of the Merger Agreement and (iii) January 31, 2014 (such date, the Forbearance Termination Date ). Additionally, the Forbearance Agreement is subject to earlier termination if a default not covered thereunder (which defaults consist of certain bankruptcy and insolvency-related events) were to occur.

The foregoing is a summary of the material terms of the Forbearance Agreement. The summary does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Forbearance Agreement. Investors are encouraged to review the entire text of the Forbearance Agreement, a copy of which is filed as Exhibit 10.1 to this report and incorporated herein by reference.



### **NextWave Holdco Transaction**

The Merger Agreement and the Forbearance Agreement require the Company to complete the transactions in connection with the formation of NextWave Holdco within thirty days following the date of the Merger Agreement or, if regulatory approval is required, as promptly as practicable following receipt of such regulatory approval.

It is contemplated that NextWave Holdco will directly or indirectly hold licenses granted by the FCC authorizing the holder to construct and operate Broadband Radio Service channels, and lease agreements pursuant to which affiliates of NextWave lease Broadband Radio Service channels or lease the excess capacity on certain channels under certain licenses granted by the FCC authorizing the construction and operation of Educational Broadband Service channels (the Asset Transfer ). In connection with the Asset Transfer, NextWave Holdco will provide a first priority guarantee of the Company's obligations to the First Lien Holders and a second priority guarantee of the Company's obligations to the Second Lien Holders in addition to the guarantees, security interests and pledges previously in place in connection with the Notes.

### ***Amended and Restated Third Lien Notes***

To permit the consummation of the transactions described above, the Holders will amend and restate the Note Agreements and amend certain documents ancillary to the Note Agreements. The Third Lien Notes will be amended and restated and split into two series to provide that certain of the Company's obligations to the Third Lien Holders will remain with the Company and the remaining obligations will become direct obligations of NextWave Holdco. Specifically, the parties have agreed that \$325 million of the Company's outstanding obligations under the Third Lien Notes will remain the Company's direct obligations and the remaining principal balance of the Company's Third Lien Notes plus accrued and unpaid interest as of the date the Third Lien Notes are amended and restated will become the direct obligations of NextWave Holdco. It is contemplated that the interest rate on the Third Lien Notes transferred to NextWave Holdco will be 16% and that the covenants applicable to the Third Lien Notes will be amended, including without limitation to provide for the following:

a restriction on the sale of the assets transferred to NextWave Holdco unless holders of 75% of the NextWave Holdco Third Lien Notes provide consent and a requirement that all net proceeds received from such sales will be held on behalf of and in trust of the holders of the NextWave Holdco Third Lien Notes by a noteholder representative;

the holders of 75% of the NextWave Holdco Third Lien Notes will also have the right to direct NextWave Holdco to sell the assets transferred to it, and all net proceeds received from such sales will similarly be held on behalf of and in trust of the holders of the NextWave Holdco Third Lien Notes by the noteholder representative;

the noteholder representative will hold all such proceeds described above until the First Lien Notes and the Second Lien Notes have been satisfied in full or the holders of 66 2/3% of the First Lien Notes and 66 2/3% of the Second Lien Notes have consented to release of the proceeds to the holders of the NextWave Holdco Third Lien Notes; and

the noteholder representative will also have the right to purchase (on behalf of and in trust for the holders of the NextWave Holdco Third Lien Notes) all of the Company's First Lien Notes and Second Lien Notes subject to the obligation to keep such notes outstanding until the consummation of the Merger until (A) the consummation of the Merger, or (B) in the event a bankruptcy proceeding is initiated, the exercise of a call right by AT&T to acquire the Third Lien Notes and the payment of the First Lien Notes and Second Lien Notes in the bankruptcy proceeding.

***NextWave Holdco Call Right***

The noteholder representative will be issued a call right (on behalf of the holders of the NextWave Holdco Third Lien Notes) for the purchase of all of the common stock of NextWave Holdco (the NextWave Holdco Call Right), which will not be exercisable until receipt of any required regulatory approvals and one of the following:

receipt of notification by AT&T that the Merger will occur and conditions to closing have been satisfied or waived so long as the NextWave Holdco Third Lien Notes are redeemed in full and \$25 million is deposited in the escrow fund for the benefits of holders of the NextWave Holdco Third Lien Notes in accordance with the Third Lien NPA;

the termination of the Merger Agreement, in which event the exercise of the NextWave Holdco Call Right will be subject to (i) the NextWave Holdco Third Lien Notes being redeemed in full pursuant to such exercise and (ii) payment of \$25 million by the holders of the NextWave Holdco Third Lien Notes, which payment will be for the benefit of the Company's stockholders; or

the filing by or against the Company or NextWave Holdco of a voluntary or involuntary petition under the Bankruptcy Code.

**Item 8.01. Other Items.**

**Voting Agreements**

Concurrently with the execution of the Merger Agreement and as an inducement to AT&T's and Merger Subs' willingness to enter into the Merger Agreement, certain stockholders of the Company who are entitled to vote an aggregate of approximately fifty-nine percent of the outstanding shares of Company Common Stock have each entered into a voting agreement pursuant to which such stockholders have agreed to vote their shares of Company Common Stock in favor of the adoption of the Merger Agreement (the Voting Agreements).

The terms of the Voting Agreements provide for certain restrictions on such stockholders' ability to enter into certain voting arrangements or transfer their shares until the Voting Agreements is terminated. In addition, the Voting Agreements will terminate upon the earliest to occur of (i) the mutual consent of AT&T and the applicable stockholder; (ii) receipt of the affirmative vote of the Company's stockholders in favor of the Merger Agreement and the transactions contemplated by the Merger Agreement; (iii) the termination of the Merger Agreement and (iv) reduction of the consideration to be received under the Merger Agreement.

The foregoing is a summary of the material terms of the Voting Agreements. The summary does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the form of Voting Agreement. Investors are encouraged to review the entire text of the form of Voting Agreement, the form of which is included as Exhibit A to the Merger Agreement filed as Exhibit 2.1 to this report and incorporated herein by reference.

**Note Purchase Agreements**

AT&T entered into note purchase agreements with the First Lien Holders (First Lien NPA), Second Lien Holders (the Second Lien NPA) and Third Lien Holders (Third Lien NPA), and together with the First Lien NPA and the Second Lien NPA, the Note Purchase Agreements, each described in more detail below. Under the First Lien NPA, Second Lien NPA and Third Lien NPA, the note holders have agreed to a number of restrictions and covenants, including without limitation:

not transfer their notes (except to other Third Lien Holders) without the consent of AT&T, subject to certain exceptions and qualifications relating to such consent right;

not to, nor encourage any other person or entity to, delay, impede, appeal or take any other action, directly or indirectly, to interfere, or that is inconsistent, with the implementation of the Merger on the terms set forth in the Merger Agreement; and

not solicit, encourage or knowingly facilitate or induce any inquiry with respect to or that could reasonably be expected to lead to the making or submission of any competing proposal to acquire the Company or participate in discussions or negotiations with respect to certain competing proposals, subject to certain limited exceptions, except discussions in which the Company is participating and which are permitted under the Merger Agreement and being conducted in accordance with the terms thereof.

*First and Second Lien Note Purchase Agreements*

AT&T will purchase from the First Lien Holders and Second Lien Holders under the First Lien NPA and Second Lien NPA, respectively, all of the First Lien Notes and Second Lien Notes for a cash purchase price equal to the outstanding principal plus accrued interest owing under the Notes immediately prior to the effective time of the Merger. Additionally, the First Lien Holders have agreed to provide a working capital line (subject to negotiation and execution of mutually agreeable documentation) of up to \$15 million to be available to the Company prior to the closing, which may be pari passu with the First Lien Notes (or senior in priority to the First Lien, Second Lien or Third Lien Notes) and senior to any other debt obligation of the Company. Proceeds from disbursements under the working capital line shall be used solely to pay expenses incurred in the ordinary course of operations of the Company or in connection with payments to be made in connection with the Merger.

*Third Lien Note Purchase Agreement*

AT&T and the Third Lien Holders entered into the Third Lien NPA as of the date of the Merger Agreement. Pursuant to the Third Lien NPA, AT&T will purchase the Third Lien Notes immediately prior to the closing of the Merger (and after the partial redemption of the Third Lien Notes for 100% of the equity interests in NextWave Holdco) for \$600 million subject to certain deductions and adjustments, specifically:

the aggregate amount to be paid to the First Lien Holders and the Second Lien Holders pursuant to the First Lien NPA and the Second Lien NPA, which amount is currently estimated to be approximately \$385 million;

the cash merger consideration to be paid to the holders of the Company's equity securities;

repayment of the Company's working capital line of credit described above;

the \$25 million to be deposited in the escrow fund for the benefit of the CPRs, which is described above under the heading Contingent Payment Rights, Escrow Fund, Adjustment Amounts and Indemnification of AT&T ;

a portion of any alternative minimum tax reasonably expected to be imposed on the Company with respect to the Merger, the Third Lien NPA and the transfer of the Other Assets or the Additional Spectrum Assets (as defined in the Merger Agreement); and

the aggregate amount of the balance sheet liabilities of the Company (other than liabilities attributable to the Notes), subject to certain exclusions, minus the amount of the Company's unrestricted cash.

In addition, \$25 million of the purchase price under the Third Lien NPA will be held in the \$50 million escrow fund to be established on the Closing Date, as described under the heading Contingent Payments Rights, Escrow Fund, Adjustment Amounts and Indemnification of AT&T .

The Third Lien Holders have also agreed, on the terms and conditions set forth in the Third Lien NPA and the Forbearance Agreement:

to pay a termination fee equal to the lesser of \$35 million and the difference between the fair market value of the proceeds received by the Third Lien Holders and the fair market value of the proceeds that would have been received under the Third Lien NPA if the Merger Agreement is terminated in connection with a Qualifying Transaction (as defined in the Merger Agreement); and

to not interfere with the Merger or take any action to support a bankruptcy filing of the Company.

The foregoing are summaries of the material terms of the Note Purchase Agreements. The summaries do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the Note Purchase Agreements. Investors are encouraged to review the entire text of the First Lien NPA, Second Lien NPA and Third Lien NPA, copies of which are filed as Exhibits 99.1, 99.2 and 99.3 to this report, respectively, and incorporated herein by reference.

#### **Additional Information About this Transaction**

In connection with the proposed Merger, the Company will file with the SEC a proxy statement to its stockholders. The Company and AT&T urge investors and security holders to read the proxy statement regarding the proposed Merger when it becomes available because it will contain important information.

You may obtain copies of all documents filed with the SEC regarding this transaction, free of charge, at the SEC's website ([www.sec.gov](http://www.sec.gov)). You may also obtain these documents, free of charge, from the Company's website ([www.nextwave.com](http://www.nextwave.com)) under the tab "Investor Relations" and then under the item "Financial Information and Filings" and then under the item "SEC Filings."

#### **Proxy Solicitation**

The Company, AT&T and their respective directors, executive officers and certain other members of management and employees may be soliciting proxies from the Company's stockholders in favor of the Merger. Information regarding the persons who may, under the rules of the SEC, be considered participants in the solicitation of the Company's stockholders in connection with the proposed Merger will be set forth in the proxy statement/prospectus when it is filed with the SEC. You can find information about the Company's executive officers and directors in its definitive proxy statement filed with the SEC on April 16, 2012. You can find information about AT&T's executive officers and directors in AT&T's definitive proxy statement filed with the SEC on March 12, 2012. You can obtain free copies of these documents from the Company and AT&T.

**Item 9.01 Financial Statements and Exhibits.**

The following exhibits are attached to this Form 8-K:

(d) Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated as of August 1, 2012, by and among AT&T Inc., Rodeo Acquisition Sub Inc. and NextWave Wireless Inc.
10.1	Forbearance Agreement, dated as of August 1, 2012, among NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc., WCS Wireless License Subsidiary, LLC, NextWave Wireless Inc. and the Holders.
99.1	Note Purchase Agreement, dated as of August 1, 2012, among AT&T Inc. and the Holders listed on Schedule I thereto and Wilmington Trust, National Association, as Holder Representative.
99.2	Note Purchase Agreement, dated as of August 1, 2012, among AT&T Inc. and the Holders listed on Schedule I thereto and Wilmington Trust, National Association, as Holder Representative.
99.3	Note Purchase Agreement, dated as of August 1, 2012, among AT&T Inc. and the Holders listed on Schedule I thereto and Wilmington Trust, National Association, as Holder Representative.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NEXTWAVE WIRELESS INC.

Date: August 6, 2012

By: /s/ Francis J. Harding

Name: Francis J. Harding

Title: Executive Vice President and Chief Financial Officer

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**Index of Exhibits**

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated as of August 1, 2012, by and among AT&T Inc., Rodeo Acquisition Sub Inc. and NextWave Wireless Inc.
10.1	Forbearance Agreement, dated as of August 1, 2012, among NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc., WCS Wireless License Subsidiary, LLC, NextWave Wireless Inc. and the Holders.
99.1	Note Purchase Agreement, dated as of August 1, 2012, among AT&T Inc. and the Holders listed on Schedule I thereto and Wilmington Trust, National Association, as Holder Representative, in respect of the First Lien Notes.
99.2	Note Purchase Agreement, dated as of August 1, 2012, among AT&T Inc. and the Holders listed on Schedule I thereto and Wilmington Trust, National Association, as Holder Representative, in respect of the Second Lien Notes.
99.3	Note Purchase Agreement, dated as of August 1, 2012, among AT&T Inc. and the Holders listed on Schedule I thereto and Wilmington Trust, National Association, as Holder Representative, in respect of the Third Lien Notes.