

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARRIS GROUP, INC., ARRIS)
ENTERPRISES, INC., ARRIS SOLUTIONS,)
INC., and GENERAL INSTRUMENT)
CORPORATION,)
) C.A. No. _____
Plaintiffs,)
) **JURY TRIAL DEMANDED**
v.)
)
CONSTELLATION TECHNOLOGIES LLC,)
and ROCKSTAR CONSORTIUM US LP,)
)
Defendants.)

COMPLAINT

Plaintiffs ARRIS Group, Inc. (“ARRIS”), ARRIS Enterprises, Inc. (“ARRIS Enterprises”), ARRIS Solutions, Inc. (“ARRIS Solutions”), and General Instrument Corporation (“General Instrument”) for their Complaint, hereby demand a jury trial and allege as follows:

THE PARTIES

1. Plaintiff ARRIS is a Delaware corporation with its principal place of business located at 3871 Lakefield Drive, Suwanee, Georgia 30024.
2. Plaintiff ARRIS Enterprise is a Delaware corporation with its principal place of business located at 3871 Lakefield Drive, Suwanee, Georgia 30024.
3. Plaintiff ARRIS Solutions is a Delaware corporation with its principal place of business located at 3871 Lakefield Drive, Suwanee, Georgia 30024.
4. Plaintiff General Instrument is a Delaware corporation with its principal place of business located at 3871 Lakefield Drive, Suwanee, Georgia 30024.

5. Constellation Technologies LLC (“Constellation”) is a Delaware limited liability company that represents its principal place of business as being located at Legacy Town Center 1, 7160 North Dallas Parkway, Suite No. 250, Plano, TX 75024.

6. Rockstar Consortium US LP (“Rockstar”) is a Delaware limited partnership that represents its principal place of business as being located at Legacy Town Center I, 7160 North Dallas Parkway, Suite 250, Plano, Texas 75024.

7. Constellation is a wholly owned subsidiary of Rockstar.

8. ARRIS Solutions, ARRIS Enterprises, and General Instrument are subsidiaries of ARRIS. ARRIS International, Inc. (“ARRIS International”) was a Delaware corporation that was merged into ARRIS.

9. Defendants have accused ARRIS customers of infringing at least U.S. Patent Nos. 5,471,474 (“the ’474 patent” attached as Exhibit A), 5,761,197 (“the ’197 patent” attached as Exhibit B), 6,128,298 (“the ’298 patent” attached as Exhibit C), 6,130,893 (“the ’893 patent” attached as Exhibit D), 6,321,253 (“the ’253 patent” attached as Exhibit E), 7,154,879 (“the ’879 patent” attached as Exhibit F), 6,128,649 (“the ’649 patent” attached as Exhibit G), and 8,464,299 (“the ’299 patent” attached as Exhibit H) (the “Asserted Patents”).

JURISDICTIONAL STATEMENT

10. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and under the patent laws of the United States, 35 U.S.C. § 1 et seq.

11. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367(a), 2201(a), and 2202.

12. This Court has personal jurisdiction over defendant Constellation by virtue of its sufficient minimum contacts with this forum at least as a result of its organization under the law of Delaware.

13. This Court has personal jurisdiction over defendant Rockstar by virtue of its sufficient minimum contacts with this forum at least as a result of its organization under the law of Delaware.

14. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) at least because Defendants reside and conduct business in this judicial district.

ARRIS IS SPUN OUT OF NORTEL

15. Until its bankruptcy in 2009, Nortel Networks Corporation (“Nortel”) was a multinational manufacturer of communications and data networking equipment.

16. Over two decades, in conjunction with its research and development efforts, Nortel, its various subsidiaries, and acquired entities secured thousands of patents related to telecommunications and data networking.

17. In November of 1995, Products Venture LLC (“Products Venture”) was formed as a joint venture pursuant to agreements between Nortel and ANTEC Corp. (“Joint Venture Agreements”).

18. The Joint Venture Agreements specified that Products Venture LLC would operate in at least the cable equipment and digital video business markets.

19. The Joint Venture Agreements stated that Product Venture LLC would “develop, manufacture and have manufactured, and distribute . . . digital broadband access networking products and applications for the delivery of narrow band and broadband services over a Hybrid Fiber Coaxial Cable Network . . . and video file server systems delivering advertising insertion services and interactive services providing analog and digital video-on-demand or near video-on-demand for a Hybrid Fiber Coaxial Cable Network.”

20. Nortel created and was aware of business plans for Product Venture LLC to develop, manufacture and have manufactured, and distribute digital broadband access

networking products and applications for the delivery of narrow band and broadband services over a Hybrid Fiber Coaxial Cable Network and video file server systems delivering advertising insertion services and interactive services providing analog and digital video-on-demand or near video-on-demand for a Hybrid Fiber Coaxial Cable Network.

21. The Joint Venture Agreements included a license agreement (“1995 License Agreement”) whereby Nortel granted Product Venture a license to its patents related to specified products in the hybrid fiber-coax network industry including “such derivatives and modifications as may be made.”

22. Products Venture was renamed ARRIS Interactive, LLC (“ARRIS Interactive”).

23. In 1996 Bay Networks, Inc. (“Bay Networks”), a company in the data networking industry, purchased LANCity Corp. (“LANCITY”), a company in the cable equipment industry.

24. In 1998, Nortel merged with Bay Networks.

25. In March of 1999, Nortel sold its broadband technology division (including but not limited to technology that Nortel obtained through the acquisition of Bay Networks and Bay Network’s assets from its previous acquisition of LANCITY) to ARRIS Interactive and granted ARRIS Interactive a license pursuant to an intellectual property agreement (“1999 IP Agreement”), which on information and belief, covered current and future products in the broadband technology industry.

26. In August of 2001, Nortel executed agreements (“ARRIS Group Agreements”) that incorporated ARRIS as a new non-affiliated entity and transferred ownership of ARRIS Interactive to ARRIS.

27. The ARRIS Group Agreements included an August 3, 2001 Intellectual Property Right Agreement (“2001 IP Agreement”).

28. The 2001 IP Agreement granted ARRIS Interactive a license to Nortel Patents over ARRIS Interactive's then current products and "natural improvements and evolutions thereof."

29. The 2001 IP Agreement explicitly granted ARRIS a license to U.S. Patent No. 5,471,474.

30. Due to the material nature of the 2001 IP Agreement to ARRIS's business, the 2001 IP Agreement was published with the SEC.

31. Nortel's SEC subsequent filings with the SEC identify the 2001 IP Agreement.

32. Rockstar and Constellation had actual or constructive notice of the 2001 IP Agreement, based at least upon the publication of the documents with the SEC.

33. ARRIS is licensed to the Asserted Patents pursuant to the terms of the 1995 License Agreement because they relate to "derivatives and modifications" of the products specified in the 1995 License Agreement.

34. Upon information and belief, ARRIS is licensed to the Asserted Patents pursuant to the terms of the 1999 License Agreement because they relate to current and future products in the broadband technology industry, as specified in the 1999 IP Agreement.

35. ARRIS is licensed to the Asserted Patents pursuant to the terms of the 2001 License Agreement because they relate to "natural improvements and evolutions" of the products it was selling in 2001.

36. ARRIS is licensed to the '474 patent pursuant to the terms of the 2001 License Agreement because it was granted an explicit license under the terms of the 2001 License Agreement.

37. As a result of the 1995 License Agreement, 1999 IP Agreement, and 2001 IP Agreement, ARRIS Interactive is licensed to at least the Asserted Patents, formerly owned by Nortel.

**NORTEL COMMITS TO LICENSE ITS PATENTS ON FAIR, REASONABLE, AND
NON-DISCRIMINATORY TERMS**

38. In conjunction with its research and development efforts, Nortel actively participated with standards setting organizations (“SSOs”), including (for example) the Institute of Electrical and Electronics Engineers (“IEEE”), the International Telecommunications Union (“ITU”), the Internet Engineering Task Force (“IETF”), and the 3rd Generation Partnership Project (“3GPP”), to establish standards for “communications technologies”—including Voice over IP, cable, wireline, and wireless, including but not limited to the delivery and routing of voice, data, and video for ultimate delivery to end customers.

39. Technical specifications and standards for communications technologies are usually developed through the efforts of SSOs, whose membership includes hardware manufacturers and service providers. New communications technologies are only broadly commercialized after device manufacturers agree on specifications that allow for interconnectivity of the devices. The standards established by SSOs therefore play a significant role in the development of communications technologies.

40. For example, standards facilitate adoption of new technologies and the development of interoperable hardware. Standards also allow consumers to purchase hardware from various manufacturers with confidence in its interoperability. Technologies incorporated into today’s communications networks are based on standards established by recognized SSOs and adopted by key industry participants.

41. Those pro-competitive benefits justify otherwise potentially anti-competitive agreements between competitors to adopt and standardize a particular technology. Yet an attendant risk of competitive harm exists if the standards-setting process is abused.

42. To ensure that market participants are able to adopt and use established standards, SSOs promulgate policies and procedures that control the disclosure and licensing of patents held by participants that may read on adopted standards. These policies and procedures are set out in each SSO's intellectual property rights policies ("IPR policies").

43. Most, if not all, IPR policies typically require participants to disclose patents that relate to the standards being considered for adoption by the SSO. These required disclosures allow the SSO and its members to evaluate technologies with full knowledge of the various intellectual property rights that may affect the industry-wide cost of adopting that technology as part of a new standard.

44. These disclosure obligations are vital to the standard setting process because they allow SSOs to develop standards without fear that patent owners participating in the standard setting process will aggressively enforce their patent rights against the industry once any potentially infringing standard is adopted.

45. IPR policies require participants that own standard essential patents to offer to license those patents on fair, reasonable, and non-discriminatory ("FRAND") terms and, when necessary, on royalty-free terms. IPR policies also require that licenses be made readily available to any member of the public interested in practicing the affected standards.

46. IPR policies usually state that a participant's commitment to license its patents on FRAND terms is irrevocable and survives until the withdrawal of the standard for which the

commitment was made. An example of an IPR policy promulgated by the IEEE can be found at: <http://standards.ieee.org/develop/policies/bylaws/sect6-7.html#6>.

47. For over two decades, in conjunction with its research and development efforts, Nortel, its various subsidiaries, and acquired entities actively participated with standards setting organizations (“SSOs”) to establish standards for “communications technologies”—including Voice over IP, cable, wireline, and wireless, including but not limited to the delivery and routing of voice, data, and video for ultimate delivery to end customers.

48. For example, over the course of its business, Nortel participated in the development of standards promulgated by various SSOs, including the Institute of Electrical and Electronics Engineers (IEEE), the International Telecommunications Union (“ITU”), the Internet Engineering Task Force (“IETF”), and the 3rd Generation Partnership Project (“3GPP”).

49. During that same time period, Nortel obtained a large number of patents that arguably cover various aspects of communications technologies. Certain patents issued to Nortel during that period relate to standards developed through the IEEE, ITU, IETF, 3GPP, and other SSOs.

50. In accordance with the established policies of each SSO with which it participated, Nortel openly and publicly committed itself to license any standard essential patents on FRAND terms. Nortel undertook these commitments through Letters of Assurance (“LOA”) issued to the SSOs or simply by disclosing its patents pursuant to the IPR policies of each SSO.

51. In many of those LOAs, Nortel assured that, for any patents in its portfolio that read on a particular standard, it would provide licenses on fair, reasonable, and non-discriminatory (“FRAND”) terms. An example of such a letter Nortel sent to the IETF is attached as Exhibit I. Many of Nortel’s LOAs specified the individual patents within Nortel’s

portfolio that read on a particular standard. An example of this second type of letter is attached as Exhibit J.

52. Nortel benefitted from having its technologies adopted by SSOs in numerous respects. For example, adoption of Nortel's technologies by SSOs led to wide adoption of those technologies in the communications industry—with the use of those technologies required by all manufacturers and service providers.

53. Nortel also acquired patents from other companies that arguably applied to these technical standards. On information and belief, these other companies also worked with such SSOs during standard setting processes and either executed LOAs or otherwise had a duty to disclose and license patents under FRAND terms.

54. Once Nortel technologies (either developed in-house or by acquisition) were required and widely adopted, Nortel benefitted further by lock in, thereby giving it the power to constrain output and/or raise prices unless it adhered to its FRAND commitments.

55. The LOAs issued by Nortel, and other obligations that it is under by virtue of its participation in SSOs, represent binding commitments to license a segment of the Nortel patent portfolio on FRAND terms.

56. Irrespective of whether Nortel (or the companies that developed patents that Nortel acquired) issued an LOA, active participation with SSOs obligated the participant to offer each standard essential patent on FRAND terms.

NORTEL LICENSES PATENTS COVERING DOCSIS

57. Cable Television Laboratories, Inc. ("CableLabs") is a non-profit research and development consortium that is dedicated to pursuing new cable communications technologies and helping its cable operator members integrate those technical advancements into their business objectives.

58. CableLabs entered into agreements with companies in cable industry (“CableLabs Agreements”) to create telecommunications standards for providing high-speed data service over cable networks, including DOCSIS (e.g. versions 1.0, 1.1, 2.0, 3.0, and 3.1), PacketCable (e.g. versions 1.0 and 1.5), OpenCable (Tru2Way), and eRouter (collectively the “DOCSIS Standards”).

59. Pursuant to the CableLabs Agreements, a participant in the CableLabs Agreements grants a royalty-free license to CableLabs and all other participants to all patents and other intellectual property owned then or thereafter by it or its affiliates, to the extent that practice of the DOCSIS Standards would infringe or otherwise utilize that property.

60. ARRIS and LANCity were participants in the CableLabs Agreements.

61. Upon information and belief, Nortel was a participant in the CableLabs Agreements.

62. Upon information and belief, because Nortel and/or its affiliates, ARRIS and LANCity, joined the CableLabs Agreements, Nortel thereby granted CableLabs, ARRIS, and the other CableLabs participants a license (with the right to sublicense others) to its patents and other intellectual property practiced through adherence to the DOCSIS Standards. Nortel benefitted from having its patented technology adopted into the DOCSIS Standards in numerous respects. For example, adoption of Nortel’s technologies in the DOCSIS Standards led to wide adoption of those technologies in the communications industry—with the use of those technologies required by all manufacturers and service providers.

63. To the extent necessary to practice the DOCSIS Standards, the ‘298, ‘494, and ‘197 patents were among those as to which CableLabs was granted a royalty-free license with the right to sublicense others.

64. Pursuant to the CableLabs Agreement, ARRIS has the right to make, have made, use, reproduce, market, import, offer to sell, and sell the inventions claimed in the '298, '494, and '197 patents, to the extent they are required to practice the DOCSIS Standards.

65. ARRIS's customers purchase hardware and software from ARRIS that complies with the DOCSIS Standards.

66. Pursuant to the CableLabs Agreements, the ARRIS customers are sublicensed to the inventions claimed in the '298, '494, and '197 patents, to the extent they are required to practice the DOCSIS Standards.

NORTEL ENTERS BANKRUPTCY AND SELLS ITS PATENTS

67. On January 14, 2009, Nortel filed for bankruptcy protection in the United States, Canada, and the United Kingdom.

68. During bankruptcy proceedings, Nortel auctioned various business units and other assets. The last major asset to be liquidated in the bankruptcy proceedings was Nortel's patent portfolio (the "Nortel Patent Portfolio").

69. The Nortel Patent Portfolio consisted of approximately 6,000 U.S. patents, foreign patents, and patent applications, and encompassed a wide range of technologies including wireless, wireless 4G, data networking, optical, voice, Internet, and semiconductors.

70. On April 4, 2011, Google Inc. ("Google") and Ranger Inc. ("Ranger"), a wholly owned subsidiary of Google, made a "stalking horse" bid to purchase the Nortel Patent Portfolio for \$900,000,000, subject to higher bids from other parties. A "stalking horse" bid is a first, favorable bid for assets strategically solicited by the bankrupt company to prevent low-ball offers.

71. On May 2, 2011, the U.S. and the Canadian bankruptcy courts, via a joint hearing, entered orders approving the \$900,000,000 stalking horse bid for the Nortel Patent Portfolio.

Those orders permitted other parties, subject to certain specified Bidding Procedures, to submit higher bids during an auction for the purchase of the Nortel Patent Portfolio.

72. The auction began on June 27, 2011 at the offices of Cleary Gottlieb Steen & Hamilton LLP in New York, New York.

73. Five parties were deemed qualified to participate in the Auction: Apple Inc. (“Apple”), Rockstar Bidco, LP (“Rockstar Bidco”), Intel Corporation, Norpax LLC, and Ranger (collectively the “Qualified Bidders”).

74. Following the fifth round of bidding, Apple partnered with Rockstar Bidco and adopted Rockstar Bidco’s transaction structure, including using Rockstar as the purchaser.

75. On June 30, 2011, Apple (in partnership with Rockstar Bidco and using Rockstar Bidco as the purchaser) won the auction with a bid of \$4.5 billion.

76. Upon information and belief, Rockstar acquired the Asserted Patents, including the ‘298, ‘494, and ‘197 patents, out of the bankruptcy estate created after Nortel filed for bankruptcy protection in Canada and the United States in 2009.

77. Upon information and belief, when Rockstar acquired its patent portfolio from the Nortel bankruptcy estate, Rockstar expressly agreed to honor Nortel’s obligations to the CableLabs Agreement.

ROCKSTAR ASSERTS THE NORTEL PATENTS

78. Upon information and belief, after Apple and Rockstar Bidco won the auction, some of the patents from the Nortel Patent Portfolio were transferred to Rockstar and some were transferred to Constellation.

79. After Rockstar Bidco’s successful bid for the Nortel Patent Portfolio, the Antitrust Division of the United States Department of Justice (“DOJ”) conducted an investigation

concerning the Rockstar Bidco acquisition, including an analysis of the standard essential patents (“SEPs”) that Nortel had committed to license to industry participants.

80. On February 13, 2012, the DOJ announced it had closed its investigation in view of “clear commitments by Apple and Microsoft to license SEPs on fair, reasonable, and non-discriminatory terms, as well as their commitments not to seek injunctions in disputes involving SEPs.” In so doing, the DOJ signaled its understanding that the members of Rockstar would retain individual discretion over the circumstances and terms of licenses to the acquired patents in the Nortel Patent Portfolio.

81. In an interview with *Wired* magazine, published on May 21, 2012, John Veschi, the CEO of Rockstar, stated that Rockstar was a “separate” company from Apple, Microsoft, and its other member companies, and that promises and commitments made by those member companies did “not apply” to Rockstar. The *Wired* article is available at <http://www.wired.com/wiredenterprise/2012/05/rockstar/>.

82. In the same interview, Mr. Veschi stated that “[p]retty much anybody out there is infringing, I would think. It would be hard for me to envision that there are high-tech companies out there that don’t use some of the patents in our portfolio.”

83. Through a campaign to enforce the Nortel Patent Portfolio, Rockstar and/or Constellation have accused several ARRIS customers in the communications, cable and/or wireline industries of infringing several patents in Rockstar’s and/or Constellation’s portfolio.

84. Rockstar and/or Constellation have accused at least the following ARRIS customers of patent infringement: Bright House Networks, LCC (“BHN”), Time Warner Cable Inc. (“TWC”), RCN Telecom Services, Inc. (“RCN”), Mediacom Communications Corporation

(“Mediacom”), WideOpenWest Finance, LLC a/k/a WOW! Internet, Cable & Phone (“WOW”), and Knology, Inc. (“Knology”) (collectively the “Known Accused Customers”).

85. ARRIS provides the Known Accused Customers with products that include cable modem termination system (“CMTS”) products, cable modem (“CM”) products, embedded multimedia terminal adapter (“EMTA”) products, quadrature amplitude modulation (“QAM”) products, switched digital video (“SDV”) products, video transcoder products, and cable set top box (“STB”) products (collectively the “Accused Products”) that allow Known Accused Customers to provide services that Rockstar and/or Constellation have accused of infringement.

86. ARRIS has agreements with each of the Known Accused Customers that specifies conditions under which ARRIS must indemnify its customers against claims of patent infringement for the use of ARRIS products.

87. On March 13, 2012, Rockstar wrote BHN and alleged that “our analysis reveals that Bright House Networks, LLC is currently offering certain products and services that infringe patents owned by Rockstar.”

88. Rockstar identified BHN’s Whole House DVR and MOCA services as allegedly infringing the ‘879 patent, and BHN’s Road Runner High Speed Internet and DOCSIS 3.0 technologies, products, and/or services as allegedly infringing the ‘474 and ‘197 patents.

89. BHN uses one or more ARRIS products, including CMTS products, to provide Whole House DVR, MOCA, Road Runner High Speed Internet, and DOCSIS 3.0 technologies, products, and/or services to its customers.

90. On July 31, 2012, BHN informed ARRIS, through its subsidiary ARRIS International, that Rockstar’s March 13, 2012 letter “appears to implicate products which BHN

purchased from ARRIS International, Inc.” and asked ARRIS to indemnify BHN against Rockstar’s claims.

91. On December 11, 2013, Rockstar brought suit against TWC asserting infringement of the ‘649 and ‘299 patents for TWC’s use of switched digital video technology, and the ‘879 patent for TWC’s use of Ethernet passive optical networks.

92. TWC uses one or more ARRIS products, including CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products, to provide switched digital video technology and Ethernet passive optical networks.

93. On January 21, 2014, TWC informed ARRIS, through its subsidiary ARRIS International, that Rockstar’s December 11, 2013 complaint may “relate to products purchased by Time Warner Cable from Arris” and asked ARRIS for assistance.

94. On March, 2012, Rockstar wrote Knology and alleged that “our analysis reveals that Knology is currently offering certain products and services that infringe patents owned by Rockstar.”

95. Rockstar identified Knology High Speed Internet and DOCSIS 3.0 as allegedly infringing the ‘474 and ‘197 patents.

96. Knology use one or more ARRIS products, including CM products and EMTA products to provide products and services that include: Knology High Speed Internet and DOCSIS 3.0.

97. On October 29, 2012, Rockstar wrote WOW and alleged that “our analysis reveals that WOW! and Knology, are currently offering certain products and services that infringe patents owned by Rockstar.”

98. Rockstar identified WOW! Digital TV, WOW! Ultra TV, WOW! Internet Xcite, Xpress, Xtreme, Xstream Turbo, WOW! Essential Phone, and WOW! Advanced Phone as allegedly infringing the '474 and '197 patents; WOW! Essential Phone, WOW! Advanced Phone, and WOW! Business Voice as allegedly infringing the '893 patent; and WOW! Internet Xcite, Xpress, Xtreme, Xstream Turbo, WOW! Essential Phone, and WOW! Advanced Phone as allegedly infringing the '253 patent.

99. WOW and/or Knology use one or more ARRIS products, including CM products and EMTA products, to provide products and services that include: WOW! Digital TV, WOW! Ultra TV, WOW! Internet Xcite, Xpress, Xtreme, Xstream Turbo, WOW! Essential Phone, and WOW! Advanced Phone.

100. On November 19, 2012, WOW informed ARRIS about Rockstar's October 29, 2012 letter and asked ARRIS for assistance.

101. On March 13, 2013, Rockstar wrote RCN and identified RCN's use or sale of RCN High-Speed Internet, RCN Wideband/Broadband, and DOCSIS 2.0 and 3.0 technologies, products, and/or services as allegedly infringing the '474, and '197 patents.

102. RCN uses one or more ARRIS products, including CM products and EMTA products, to provide RCN High-Speed Internet Service, RCN Wideband/Broadband Service, and DOCSIS 2.0 and 3.0 technologies, products, and/or services.

103. On August 2, 2013, RCN wrote ARRIS and stated that Rockstar "continues to assert that RCN's use or sale of various products that RCN purchases from Arris Group, Inc. or its related companies . . . such as modems and eMTAs . . . infringes at least the following five patents . . . 1. U.S. Pat. No. 5,471,474 (Grobicki), 2. U.S Pat. No. 5,761,197 (Takefman), 3. U.S.

Pat. No. 6,128,298 (Wootton), 4. U.S. Pat. No. 6,130,893 (Whittaker), 5. U.S. Pat. no. 6,321,253 (McKeen)” and requested that ARRIS indemnify RCN and assist RCN with Rockstar’s claims.

104. Prior to August 8, 2013, Rockstar identified Mediacom’s use of DOCSIS 2.0/3.0, OpenCable, Packet Cable 1.5, and eRouter as implemented in CMTS and EMTA equipment as allegedly infringing the ‘474, ‘197, ‘298, ‘893, and ’253 patents.

105. ARRIS has sold CMTS and EMTA equipment to Mediacom.

106. On August 8, 2013, Mediacom informed ARRIS about Rockstar’s assertion letter, through its subsidiary General Instrument Corporation, stating that “the equipment and processes identified by Rockstar may be provided by your company” and requesting assistance.

107. On information and belief, Rockstar and Constellation have asserted their patents against ARRIS customers other than the Known Accused Customers.

108. Rockstar has used several different subsidiary companies including Bockstar Technologies LLC (“Bockstar”), Constellation, MobileStar Technologies LLC (“MobileStar”), and NetStar Technologies LLC (“NetStar”) to assert patents or engage in litigation against accused infringers.

109. The practice of using several different subsidiary companies has made it difficult for accused infringers to locate information about Rockstar, Constellation, and the other Rockstar subsidiaries.

110. Upon information and belief, Defendants have refused to identify for accused infringers, including the Known Accused Customers, the full list of patents they are purportedly infringing. Instead, Rockstar provided only what it deemed “exemplary” patents from the portfolio for evaluation. That left accused infringers with no way to meaningfully evaluate

Rockstar's infringement allegations, to refute its allegations of infringement, or to determine the actual value of the relevant patents within Rockstar's portfolio.

111. Rockstar has transferred portions of the Nortel Patent Portfolio to wholly-owned subsidiaries, such as Constellation, for the purpose of initiating additional patent infringement suits against ARRIS and its customers, and thereby frustrating Defendants' FRAND and DOCSIS obligations.

112. Defendants' allegations of infringement, threats of litigation, and lawsuits have cast a cloud of uncertainty over ARRIS's businesses requiring the declaratory relief sought in this Complaint.

113. Upon information and belief, Defendants have refused to enter into meaningful negotiations with the Known Accused Customers with respect to Asserted Patents unless they execute non-disclosure agreements.

114. Upon information and belief, Defendants threatened to bring suit against accused infringers that have refused to execute non-disclosure agreements with Defendants.

115. Upon information and belief, Defendants have brought suit against accused infringers that have refused to execute non-disclosure agreements with Defendants.

116. Defendants' strategy of entering into non-disclosure agreements has concealed the scope of Defendants' assertions, has been orchestrated to subvert the FRAND and DOCSIS royalty free obligations, and further casts a cloud of uncertainty over ARRIS's businesses requiring the declaratory relief sought in this Complaint.

117. Since October 2013, Rockstar, Constellation, and Rockstar's other subsidiaries have filed multiple lawsuits in which they accuse various technology companies of infringing

patents within the portfolio. These recent enforcement activities make the threat of serial litigation immediate and concrete to ARRIS and its customers

118. These activities by or on behalf of Defendants create an immediate, definite, concrete and substantial dispute regarding the alleged infringement by ARRIS and ARRIS's customers of patents in Rockstar's portfolio.

FIRST CLAIM FOR RELIEF: DECLARATORY JUDGMENT OF LICENSE AND EXHAUSTION OF PATENT RIGHTS PURSUANT TO THE LICENSES BETWEEN ARRIS AND NORTEL

119. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of the complaint.

120. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

121. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to Known Accused Customers.

122. The 1995 License Agreement, 1999 IP Agreement, and 2001 IP Agreement granted ARRIS Interactive a license to the Asserted Patents.

123. As a result, the Asserted Patents are expressly or impliedly licensed to ARRIS, licensed to ARRIS's customers, and exhausted with respect to ARRIS's customers.

124. Absent a declaration that Defendants' rights in the Asserted Patents are expressly or impliedly licensed to the Known Accused Customers and/or exhausted, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

125. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the Asserted Patents are expressly or impliedly licensed to ARRIS,

licensed to ARRIS's customers, and exhausted with respect to ARRIS's customers' use of ARRIS's products or services.

126. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that Defendants' rights in at least the Asserted Patents are expressly or impliedly licensed to ARRIS, licensed to ARRIS's customers, and exhausted with respect to ARRIS's customers' use of ARRIS's products or services, including ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products.

SECOND CLAIM FOR RELIEF: DECLARATORY JUDGMENT OF OBLIGATION TO LICENSE ON FAIR, REASONABLE, AND NON-DISCRIMINATORY TERMS

127. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of the complaint.

128. Nortel expressly or impliedly entered into contractual commitments with the IEEE, IETF, ITU, 3GPP, and other SSOs to offer to license standard essential patents in a manner consistent with the representations in each LOA and pursuant to the policies promulgated by each SSO.

129. As subsequent owners to the Nortel patent portfolio, Defendants are obligated to honor Nortel's express and implied FRAND licensing commitments with respect to at least those patents.

130. Rockstar, for itself and on behalf of its assignee Constellation, has publicly repudiated its duty to honor Nortel's express and implied FRAND licensing commitments with respect to any and all standard essential patents that were previously part of the Nortel Patent Portfolio.

131. Rockstar, for itself and on behalf of its assignee Constellation, has refused to offer licenses to ARRIS or its customers on FRAND terms for FRAND-encumbered standard essential patents.

132. There is a dispute between the parties concerning whether Defendants are obligated to offer licenses for standard-essential patents that were previously part of the Nortel Patent Portfolio on FRAND terms.

133. The dispute is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

134. Based on the foregoing, Plaintiffs hereby request a declaratory judgment that Rockstar and Constellation have not offered licenses to ARRIS or its customers on terms consistent with the representations in each LOA submitted by Nortel and pursuant to the policies promulgated by the IEEE, IETF, ITU, 3GPP and other SSOs for any of the patents-in-suit.

135. Because Rockstar and Constellation have refused to offer licenses to ARRIS and its customers on FRAND terms, ARRIS is further entitled to a declaratory judgment as to which of the patents-in-suit are standards essential and setting forth the FRAND terms for each valid, standard essential, FRAND encumbered patent allegedly practiced by ARRIS and its customers.

136. Based on the foregoing, Plaintiffs hereby further request a declaratory judgment that if Rockstar and Constellation refuse to offer licenses to the Asserted Patents to ARRIS and/or its customers on FRAND terms, the standard essential patents at issue shall be unenforceable as to ARRIS and its customers.

**THIRD CLAIM FOR RELIEF: DECLARATORY JUDGMENT OF LICENSE AND
EXHAUSTION OF PATENT RIGHTS RELATING TO DOCSIS PURSUANT TO
CABLELABS AGREEMENTS**

137. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of the complaint.

138. The Defendants claim to own all rights, title, and interest in the '298, '494, and '197 patents.

139. The Defendants have accused the Known Accused Customers of infringing one or more of the '298, '494, and '197 patents by using technology necessary to practice the DOCSIS Standards as implemented in ARRIS's technologies, products, and/or services, including CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products.

140. Because Nortel and/or Nortel affiliates were participants in the CableLabs Agreements, Nortel granted CableLabs and ARRIS a license to at least the '298, '494, and '197 patents to the extent required to comply with the DOCSIS Standards.

141. As a result, at least the '298, '494, and '197 patents are expressly or impliedly licensed to ARRIS, licensed to ARRIS's customers, and exhausted with respect to ARRIS's customers' use of ARRIS's products or services necessary to practice the DOCSIS Standards.

142. Absent a declaration that Defendants' rights in the Asserted Patents are expressly or impliedly licensed to the Known Accused Customers and/or exhausted, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

143. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the '298, '494, and '197 patents are expressly or impliedly licensed to ARRIS, licensed to ARRIS's customers, and exhausted with respect to ARRIS's customers' use of ARRIS's products or services necessary to practice the DOCSIS Standards.

144. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that Defendants' rights in at least the Asserted Patents, including the '298, '494, and '197 patents are

expressly or impliedly licensed to ARRIS, licensed to ARRIS's customers, and exhausted with respect to ARRIS's customers' use of ARRIS's products or services necessary to practice the DOCSIS Standards, including: CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products and STB products.

FOURTH CLAIM FOR RELIEF: UNFAIR COMPETITION UNDER DELAWARE LAW

145. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of the complaint.

146. ARRIS had expectations of entering into licenses to the Asserted Patents to ARRIS and/or its customers on FRAND terms.

147. ARRIS has a business relationship with its customers that includes selling the Accused Products to the Known Accused Customers.

148. ARRIS has expectations of entering into business relationships with new customers by selling them Accused Products.

149. Defendants have engaged in unfair competition and interfered with ARRIS's current and expected business relationships by, among other things, wrongfully accusing ARRIS's customers of infringement, falsely representing that ARRIS's customers are not licensed to the Asserted Patents, pressuring ARRIS's customers to sign NDA agreements to hamper cooperation with ARRIS and to frustrate Defendants' FRAND and DOCSIS royalty commitments, concealing the true owner of patents from the Nortel Patent Portfolio, and concealing the complete list of patents Defendants believe ARRIS's customers are infringing.

150. As a result of the foregoing unfair competition, ARRIS has been damaged in its business or property and is threatened by imminent loss of profits, loss of customers, and loss of goodwill.

151. Based on the foregoing, Plaintiffs hereby request a declaration that the Asserted Patents are unenforceable due to Defendants' Unfair Competition.

**FIFTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF NON-
INFRINGEMENT OF THE '474 PATENT**

152. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of this Complaint.

153. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

154. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to Known Accused Customers, including at least ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products, and products that implement DOCSIS Standards.

155. Absent a declaration that ARRIS's products do not infringe the '474 patent, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

156. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the following products infringe the '474 patent: ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products, and products that implement DOCSIS Standards.

157. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that ARRIS's products do not directly or indirectly infringe any claim of the '474 patent.

**SIXTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '197 PATENT**

158. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of this Complaint.

159. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

160. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to Known Accused Customers, including at least ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products, and products that implement DOCSIS Standards.

161. Absent a declaration that ARRIS's products do not infringe the '197 patent, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

162. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the following products infringe the '197 patent: ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products, and products that implement DOCSIS Standards

163. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that ARRIS's products do not directly or indirectly infringe any claim of the '197 patent.

**SEVENTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '298 PATENT**

164. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of this Complaint.

165. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

166. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to Known Accused Customers, including at least ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products.

167. Absent a declaration that ARRIS's products do not infringe the '298 patent, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

168. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the following products infringe the '298 patent: ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products.

169. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that ARRIS's products do not directly or indirectly infringe any claim of the '298 patent.

**EIGHTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '893 PATENT**

170. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of this Complaint.

171. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

172. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to Known Accused Customers, including at least ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products,

173. Absent a declaration that ARRIS's products do not infringe the '893 patent, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

174. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the following products infringe the '893 patent: ARRIS's CM

products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products.

175. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that ARRIS's products do not directly or indirectly infringe any claim of the '893 patent.

**NINTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '253 PATENT**

176. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of this Complaint.

177. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

178. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to Known Accused Customers, including at least ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products, and products that implement DOCSIS Standards.

179. Absent a declaration that ARRIS's products do not infringe the '253 patent, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

180. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the following products infringe the '253 patent: ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products, and products that implement DOCSIS Standards.

181. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that ARRIS's products do not directly or indirectly infringe any claim of the '253 patent.

**TENTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE ‘879 PATENT**

182. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of this Complaint.

183. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

184. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to Known Accused Customers, including at least ARRIS’s CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products.

185. Absent a declaration that ARRIS’s products do not infringe the ‘869 patent, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

186. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the following products infringe the ‘879 patent: ARRIS’s CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products.

187. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that ARRIS’s products do not directly or indirectly infringe any claim of the ‘879 patent.

**ELEVENTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE ‘649 PATENT**

188. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of this Complaint.

189. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

190. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to

Known Accused Customers, including at least ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products STB products.

191. Absent a declaration that ARRIS's products do not infringe the '649 patent, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

192. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether the following products infringe the '649 patent: ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products.

193. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that ARRIS's products do not directly or indirectly infringe any claim of the '649 patent.

**TWELFTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '299 PATENT**

194. ARRIS realleges and incorporates by reference the allegations set forth in the other sections of this Complaint.

195. The Defendants claim to own all rights, title, and interest in the Asserted Patents.

196. The Defendants have accused the Known Accused Customers of infringing the Asserted Patents by using technologies, products, and/or services that ARRIS provided to Known Accused Customers, including at least ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products.

197. Absent a declaration that ARRIS's products do not infringe the '299 patent, Defendants will continue to assert the Asserted Patents against ARRIS and/or its customers and thereby cause ARRIS irreparable harm and injury.

198. A substantial, immediate, and real controversy therefore exists between ARRIS and Defendants as to whether ARRIS's products infringe the '299 patent, the following products infringe the '299 patent: ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products.

199. Based on the foregoing, Plaintiffs hereby request a declaration from the Court that ARRIS's products do not directly or indirectly infringe any claim of the '299 patent.

PRAYER FOR RELIEF

WHEREFORE, ARRIS seeks the following relief:

A. Declaring that Defendants' rights in at least the Asserted Patents are expressly or impliedly licensed to ARRIS, licensed to ARRIS's customers, and exhausted with respect to ARRIS's customers' use of ARRIS's products or services, including ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products;

B. Declaring which of the patents-in-suit are standards essential, Defendants' licensing obligations with respect to their FRAND encumbered patents, and the corresponding unenforceability of those patents if not offered for license on FRAND terms;

C. Ordering Defendants to specifically perform its contractual obligations by offering a FRAND license to Plaintiffs to each valid FRAND-encumbered patent in their portfolio that is practiced by Plaintiffs;

D. Declaring that Defendants' rights in at least the Asserted Patents are expressly or impliedly licensed to ARRIS, licensed to ARRIS's customers, and exhausted with respect to ARRIS's customers' use of ARRIS's products or services necessary to practice the DOCSIS standards, including ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, and STB products;

E. Declaring that the Asserted Patents are unenforceable due to Defendants' Unfair Competition;

F. Declaring that ARRIS's products, including ARRIS's CM products, EMTA products, CMTS products, QAM products, SDV products, video transcoder products, STB products, and products that practice the DOCSIS Standards do not infringe any of U.S. Patents Nos. 5,471,474, 5,761,197, 6,128,298, 6,130,893, 6,321,253, 7,154,879, 6,128,649, and 8,464,299;

G. Declaring that judgment be entered in favor of ARRIS and against Defendants on each of ARRIS's claims;

H. Finding that this an exceptional case under 35 U.S.C. § 285;

I. Awarding ARRIS its costs and attorneys' fees in connection with this action; and

J. Such further and additional relief as the Court deems just and proper.

JURY DEMAND

ARRIS hereby demands a trial by jury on all issues properly triable before a jury.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)
Maryellen Noreika (#3208)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@mnat.com
mnoreika@mnat.com

Attorneys for Plaintiffs

January 30, 2014

7966858.1