

COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



IRON WORKERS DISTRICT COUNCIL
OF NEW ENGLAND PENSION FUND and
STATE-BOSTON RETIREMENT
SYSTEM, Individually and on Behalf of All
Others Similarly Situated,

Plaintiffs,

v.

NII HOLDINGS, INC., NII CAPITAL
CORP., STEVEN M. SHINDLER, STEVEN
P. DUSSEK, GOKUL HEMMADY,
TERESA S. GENDRON, DANIEL E.
FREIMAN, DONALD NEFF, KEVIN L.
BEEBE, RAYMOND P. DOLAN,
DONALD GUTHERIE, CHARLES M.
HERINGTON, CAROLYN KATZ,
ROSENDO G. PARRA, JOHN W. RISNER,
JUAN R. FIGUEROO, GARY D.
BEGEMAN, GOLDMAN, SACHS & CO.,
CREDIT SUISSE SECURITIES (USA)
LLC, DEUTSCHE BANK SECURITIES
INC., J.P. MORGAN SECURITIES LLC,
MORGAN STANLEY & CO. LLC,
CITIGROUP GLOBAL MARKETS INC.,
and HSBC SECURITIES (USA) INC.,

Defendants.

Civ. A. No. 1:14-cv-00077

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF FEDERAL SECURITIES
LAWS**

DEMAND FOR JURY TRIAL

Plaintiffs Iron Workers District Council of New England Pension Fund ("Iron Workers") and State-Boston Retirement System ("Boston") (together, "Plaintiffs"), by and through their undersigned counsel, allege the following individually and on behalf of a class of all persons and entities similarly situated, upon information and belief, except as to those allegations concerning Plaintiffs, which are alleged upon personal knowledge. Plaintiffs' allegations are based upon the

investigation of Plaintiffs' counsel, which included a review of U.S. Securities and Exchange Commission ("SEC") filings by NII Holdings, Inc. ("NII" or the "Company") and its wholly-owned subsidiary NII Capital Corp. ("NII Capital"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company and its operating businesses, media reports about the Company, and other publicly available information concerning NII and (as defined herein) the Individual Defendants, the Officer and Director Defendants, and the Underwriter Defendants. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. NATURE OF THE ACTION

1. This is a federal securities class action brought pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") on behalf of all persons or entities who, between February 25, 2010 and February 27, 2014, inclusive (the "Class Period"), purchased or otherwise acquired the securities of NII, including debt securities issued by NII Capital (the "Class"). The Exchange Act claims allege that certain Defendants engaged in a fraudulent scheme to artificially inflate the prices of NII's securities, including the debt securities issued by NII Capital, during the Class Period.

2. This action is also brought pursuant to the Securities Act of 1933 (the "Securities Act") on behalf of all persons or entities who purchased debt securities of NII Capital pursuant and/or traceable to two registered public offerings. Through one debt offering (the "March Offering"), which commenced on or about March 25, 2011, NII Capital sold approximately \$750 million in notes at 100 percent of their face value, due in 2021, and paying interest at a rate of 7.625 percent per year (the "Notes"). Through a second debt offering, commenced on or about December 6, 2011 (the "December Offering" and together with the March Offering, the "Notes

Offerings”), NII Capital sold an additional \$700 million of this same series of Notes at 98.50 percent of their face value.

3. Pursuant to the Securities Act, Defendants are strictly liable for the material misstatements in the Offering Documents (as defined herein) for the Notes Offerings, and these claims specifically exclude any allegations of knowledge or scienter. The Securities Act claims are based solely on strict liability and negligence, and are not based on any reckless or intentionally fraudulent conduct by or on behalf of Defendants—*i.e.*, they do not allege, arise from, or sound in, fraud. Plaintiffs specifically disclaim any allegation of fraud, scienter, or recklessness in these non-fraud claims.

4. This complaint alleges that in NII’s Offering Documents and throughout the Class Period, Defendants made false statements of material fact and concealed material adverse information about the Company’s declining business, financial state, and future prospects. As a result of Defendants’ wrongful acts, false and misleading statements and omissions, and the resulting precipitous decline in the market value of the Company’s securities, Plaintiffs and the other Class members have suffered significant losses and damages.

II. FACTUAL OVERVIEW AND SUMMARY OF ALLEGATIONS

5. NII is a telecommunications company that, through its subsidiaries, operates wireless voice and data networks in Mexico, Brazil, and other countries in Latin America under the Nextel™ brand. These wireless networks were the primary source of the Company’s revenues, and their success was critical to its future.

6. Nextel wireless service features an idiosyncratic push-to-talk (“PTT”) style communication option. This PTT technology was key in distinguishing the Nextel brand from competitors, and was only supported on a type of mobile communication network called an

Integrated Digital Enhanced Network, or iDEN, carried by towers specifically designed for that system.

7. The iDEN technology is a proprietary technology developed by Motorola Inc. (“Motorola”), and Motorola continues to be the only source for iDEN systems. Consequently, iDEN systems are generally more expensive to build and maintain than systems that use non-proprietary technologies, such as Global System for Mobile Communications (“GSM”) or Wide-band Code Division Multiple Access (“WCDMA”).

8. Prior to 2005, Nextel’s PTT wireless service was available in the United States through an iDEN network operated by Nextel Communications, Inc. (“Nextel Communications”), an entity unrelated to NII. During this period, Nextel Communications was the primary purchaser of iDEN-related technology from Motorola, and the scale of these purchases gave NII assurance of Motorola’s continued economic incentive to support and update iDEN technology.

9. Beginning in 2005, when Nextel Communications merged with Sprint Corporation (“Sprint”), Sprint began to operate the PTT-compatible iDEN service in the United States. By 2008, it had become apparent to industry analysts that the PTT technology was declining in popularity in the U.S. market, causing Sprint to rethink its provision of costly iDEN service in the United States.

10. The declining popularity of PTT in the United States and the prospect that Motorola would no longer have an incentive to support iDEN networks in the United States caused NII to believe that it could no longer rely on Motorola to continue to support the iDEN technology that was then essential to support PTT wireless service.

11. By 2009, the Company launched an effort to rapidly transition to a new network based on the less expensive non-proprietary WCDMA technology that would be able to support

PTT-style communication. The WCDMA network was also expected to provide higher-speed data availability, commonly referred to as “3G” connectivity.

12. The success of this effort to build a new network was widely seen as essential to the Company’s future.

13. A crucial part of NII’s network development strategy involved the construction of new WCDMA-service radio antenna co-location towers, some of which NII would sell and then lease back from purchasers.

14. The Class Period begins on February 25, 2010, when the Company reported positive financial results for the fourth quarter and full year of 2009, and gave encouraging guidance for 2010. In reporting its financial results, the Company accounted for certain radio tower leases related to the development of the new network as operating leases.

15. By classifying these leases as operating leases rather than capital leases, NII represented that its efforts to develop its WCDMA network, which was required for continued success and future growth, were succeeding, yielding high-value, long-life network towers.

16. The Company’s financial report also included substantial deferred tax assets. Because such assets can be used only to offset future profits, their inclusion signaled to investors that the Company projected future profitability.

17. In response to these rosy statements and the favorable appearance of its balance sheet, NII’s stock price rose, increasing \$0.42 per share to close at \$37.87 per share on February 25, 2010.

18. During the period that followed, NII continued to claim that the development of its WCDMA network was progressing in a satisfactory manner, by, among other things, representing that the value of the WCDMA towers that it built, sold, and leased back was high, and that the life

of the towers was long enough to justify operating lease accounting treatment. NII also continued to report substantial deferred tax assets, and in so doing assured the public of its belief in future profitability.

19. These statements and other Class-Period statements relating to the progress that NII was making in its efforts to modernize its network systems, its outlook for future growth and profitability, and the value of certain deferred tax assets were false and misleading.

20. The true state of the Company's obsolescent business model and declining prospects became clear through a series of disclosures. First, NII revealed worsening prospects on August 7, 2012, with the issuance of a press release announcing its financial results for the quarter ended June 30, 2012. In connection with these results, the Company cut its guidance for full-year 2012, including by reducing projected net subscriber additions from 1.4 million to 1.0 million and by decreasing projected consolidated operating revenue from \$7.1 billion to \$6.1 billion.

21. That day, the Company also filed its quarterly report on Form 10-Q for the quarter ended June 30, 2012. Therein, certain of the Defendants (as defined below) disclosed that the Company's financial statements had, since 2009, included a number of errors relating to the valuation and/or classification of accounts for value-added taxes, income taxes, the capitalization of construction in progress, and operating and capital leases, among other things. In response to these revelations, NII's stock price fell \$1.97 per share, or 24.38 percent, to close at \$6.11 per share on August 7, 2012.

22. Soon thereafter, the Company announced that it would be publishing a restatement of its false financial reports. On October 31, 2012, the Company disclosed that "the audited financial statements included in [its] Form 10-K for the year ended December 31, 2011 and the

unaudited financial statements included in our Form 10-Q for the quarter ended March 31, 2012 should no longer be relied upon,” and that the Company would restate its financial information for the fiscal years ended December 31, 2011, 2010, and 2009.

23. Then, on February 5, 2013, the Company issued a press release providing disappointing preliminary results for the quarter and full year ended December 31, 2012, as well as weak guidance for 2013, including mid-single digit subscriber growth and consolidated revenues in the range of \$5.7 to \$5.9 billion. In reaction to this partial disclosure of the financial effects of the Company’s struggles to upgrade its systems, NII’s stock price declined \$0.55 per share, or 8.62 percent, to close at \$5.83 per share on that day. Additionally, the market price of the Notes declined by 9.39 percent to close at \$700 per Note that day.

24. Six months later, the Company disclosed that it had been overstating the value of deferred tax assets related to its Mexican operations. On August 1, 2013, NII issued a press release announcing its financial results for the quarter ended June 30, 2013, including a \$99.9 million valuation allowance related to the Company’s deferred tax assets. In response to this disclosure of the true value of NII’s deferred tax assets and partial disclosure of its true outlook for profitability, NII’s stock price fell \$0.49 per share, or 6.81 percent, to close at \$6.71 per share on that day.

25. On October 31, 2013, the Company began to explicitly acknowledge the weaknesses in its network and modernization efforts. NII issued a press release announcing disappointing financial results for the quarter ended September 30, 2013, including a net subscriber loss of 178,000, driven by a loss of 247,100 subscribers in Mexico. In response, NII’s stock price dropped \$1.37 per share, or 28.54 percent, to close at \$3.43 per share on that day.

Further, the market price of the Notes declined by 10.94 percent, to close at \$570 per Note that day.

26. Finally, on February 28, 2014, Defendants revealed the extent of the Company's failed efforts to implement its new systems and its true outlook. NII published a press release with poor results for the full year and quarter ending December 31, 2013, including a larger-than-expected net loss. NII also alerted investors that it "will have to significantly improve its operating performance and consider other options to enhance its liquidity position to meet its financial obligations and fund its business in 2015 and beyond." Importantly, NII reported a net loss of 247,000 subscribers across all markets, including a loss of 390,000 subscribers in the Company's key Mexico market for the quarter. In reaction to these developments, NII's stock price declined \$1.43 per share, or 55.43 percent, to close at \$1.15 per share on that day. Additionally, the market price of the Notes declined by 10.58 percent to close at \$375 per Note that day.

27. The following true facts were known to Defendants but concealed from NII's shareholders during the Class Period:

(a) the Company's financial statements, as set forth in its periodic reports filed with the SEC, included, among other things, material misstatements regarding value-added taxes, income tax expense and liability, the capitalization of work in progress, and the classification of capital and operating leases that inflated the Company's reported financial performance in 2009 and 2010, and gave a false impression of the success of its effort to launch a new network;

(b) the Company's efforts to transition away from its iDEN-based infrastructure were a failure from the outset, causing its subscribers to defect in droves;

(c) the Company's replacement network in key markets such as Mexico was not ready to support the service load created by the phase-out of the iDEN network;

(d) the outlook for profitability at Comunicaciones Nextel de Mexico, S.A. de C.V. ("Nextel Mexico"), the Company's Mexican operating company, had dramatically deteriorated, but deferred tax assets (whose value is tied to projected profitability) held on Nextel Mexico's balance sheet and consolidated onto the balance sheet of NII were maintained at artificially inflated values; and

(e) as a result of the foregoing, Defendants lacked a rational basis for their projections of the Company's performance and profitability.

28. As a result of Defendants' false and/or misleading statements and omissions:

(1) NII Capital's Notes were offered and traded at artificially inflated prices; and (2) NII's common stock traded at inflated prices during the Class Period. However, as the truth about NII's operations and outlook became known to investors, the artificial inflation came out of these securities and the prices of NII Capital's Notes and NII's common stock declined. These price declines caused significant losses and damages to Plaintiffs and other members of the Class.

III. JURISDICTION AND VENUE

29. The claims asserted herein arise under Sections 11, 12(a)(2), and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l and 77o, and Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5.

30. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, and Section 27 of the Exchange Act, 28 U.S.C. § 1331.

31. Venue is proper in this District pursuant to Section 22(a) of the Securities Act, Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). The Company maintains its principal place of business in this District and many of the acts that constitute the violations of law complained of herein, including dissemination of materially false and misleading information to the investing public, occurred in and/or were issued from this District.

32. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

IV. CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased NII and NII Capital securities during the Class Period. Excluded from the Class are Defendants and their families, directors and officers of NII and NII Capital and their families, and their affiliates.

34. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of February 21, 2014, NII had 172,105,746 shares outstanding, owned by thousands of persons, and NII Capital had approximately \$1.45 billion in Notes outstanding and unconditionally guaranteed by the Company, owned by thousands of persons.

35. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include:

- (a) whether the Securities Act was violated by certain Defendants;
- (b) whether the Exchange Act was violated by certain Defendants;

- (c) whether Defendants omitted and/or misrepresented material facts;
- (d) whether Defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (e) whether certain Defendants knew or recklessly disregarded that their statements were false and misleading;
- (f) whether the prices of NII and NII Capital's securities were artificially inflated; and
- (g) the extent of damage sustained by Class members and the appropriate measure of damages.

36. Plaintiffs' claims are typical of those of the Class because Plaintiffs and the Class sustained damages from Defendants' wrongful conduct.

37. Plaintiffs will adequately protect the interests of the Class and have retained counsel experienced in class action securities litigation. Plaintiffs have no interests that conflict with those of the Class.

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

V. SECURITIES ACT CLAIMS

A. Parties

1. Plaintiff

39. Plaintiff Boston is a defined-benefit governmental pension plan headquartered in Boston, Massachusetts. It manages assets on behalf of beneficiaries associated with the City of Boston, the Boston Redevelopment Authority, the Boston Housing Authority, the Boston Water and Sewer Commission, the Boston Public Health Commission, and others. As set forth in the

attached certification, Plaintiff Boston purchased the securities of NII Capital at artificially inflated prices pursuant or traceable to Offering Documents and has been damaged thereby.

2. Securities Act Defendants

(a) The Company and Its Subsidiary

40. Defendant NII is a telecommunications company incorporated in Delaware. NII maintains its principal executive offices at 1875 Explorer Street, Suite 1000, Reston, Virginia.

41. NII Capital is a wholly-owned subsidiary of NII and is incorporated in Delaware with principal executive offices also at 1875 Explorer Street, Suite 1000, Reston, Virginia. NII Capital's publicly-issued debt securities are fully and unconditionally guaranteed on a senior unsecured basis by NII.

(b) The Officer and Director Defendants

42. Defendant Steven M. Shindler ("Shindler") has been the Executive Chairman of the Company's board of directors since November 12, 2002, and Chief Executive Officer ("CEO") since December 13, 2012, having previously held that position from 2000 until February 2008. Shindler served as a member of the Board of Directors of NII Capital during the Note Offerings. Shindler signed the registration statements of the Company and NII Capital in connection with the Note Offerings.

43. Defendant Steven P. Dussek ("Dussek") was CEO of NII for all relevant periods prior to December 13, 2012. Dussek also served as President and Director of NII Capital during the periods relevant to the Note Offerings. Dussek signed the registration statements of the Company and NII Capital in connection with the Note Offerings.

44. Defendant Gokul Hemmady ("Hemmady") served the Company in a number of capacities during the Class Period, including as the Company's Chief Financial Officer ("CFO") for all relevant periods prior to October 17, 2012, and as Chief Operating Officer ("COO") for all

relevant periods after June 14, 2012. Hemmady also served as Vice President, Treasurer, Principal Financial Officer, and Principal Accounting Officer for NII Capital during the periods relevant to the Note Offerings. Hemmady signed the registration statements of the Company and NII Capital in connection with the Note Offerings.

45. Defendant Teresa S. Gendron (“Gendron”) was the Company’s Vice President and Controller for all relevant periods prior to November 23, 2011. Gendron signed the Company’s registration statement in connection with the March Offering.

46. Defendant Daniel E. Freiman (“Freiman”) has been the Company’s Vice President, Treasurer, and Controller for all relevant periods on or after November 23, 2011. Freiman signed the Company’s registration statement in connection with the December Offering.

47. Defendant Kevin L. Beebe (“Beebe”) is a member of the Company’s board of directors. Beebe signed the Company’s registration statements in connection with the Note Offerings.

48. Defendant Raymond P. Dolan (“Dolan”) was a member of the Company’s board of directors for all relevant periods prior to May 9, 2012. Dolan signed the Company’s registration statements in connection with the Note Offerings.

49. Defendant Donald Guthrie (“Guthrie”) is a member of the Company’s board of directors. Guthrie signed the Company’s registration statements in connection with the Note Offerings.

50. Defendant Charles M. Herington (“Herington”) is a member of the Company’s board of directors. Herington signed the Company’s registration statements in connection with the Note Offerings.

51. Defendant Carolyn Katz (“Katz”) is a member of the Company’s board of directors. Katz signed the Company’s registration statements in connection with the Note Offerings.

52. Defendant Rosendo G. Parra (“Parra”) is a member of the Company’s board of directors. Parra signed the Company’s registration statements in connection with the Note Offerings.

53. Defendant John W. Risner (“Risner”) is a member of the Company’s board of directors. Risner signed the Company’s registration statements in connection with the March Offering.

54. Defendant Gary D. Begeman (“Begeman”) is a Vice President and the General Counsel and Secretary of the Company, and served as a member of the board of directors of NII Capital during the periods relevant to the Note Offerings. Begeman signed the registration statements of NII Capital in connection with the Note Offerings.

55. The Defendants listed in paragraphs 42 to 54 are referred to as the “Officer and Director Defendants.”

(c) The Underwriter Defendants

56. Defendant Goldman, Sachs & Co. (“Goldman”) acted as an underwriter of the Notes Offerings and as the representative of the underwriters for the March Offering. Goldman maintains its principal place of business at 200 West Street, New York, New York.

57. Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) acted as an underwriter of the Notes Offerings. Credit Suisse maintains its principal place of business at 11 Madison Avenue, New York, New York.

58. Defendant Deutsche Bank Securities Inc. (“Deutsche Bank”) acted as an underwriter of the Notes Offerings and as the representative of the underwriters for the December

Offering. Deutsche Bank maintains its principal place of business at 60 Wall Street, New York, New York.

59. Defendant J.P. Morgan Securities LLC (“J.P. Morgan”) acted as an underwriter of the Notes Offerings. J.P. Morgan maintains its principal place of business at 383 Madison Avenue, New York, New York.

60. Defendant Morgan Stanley & Co. LLC (formerly, Morgan Stanley & Co. Incorporated, and together with its predecessor entity, “Morgan Stanley”) acted as an underwriter of the Notes Offerings. Morgan Stanley maintains its principal place of business at 1585 Broadway, New York, New York.

61. Defendant Citigroup Global Markets Inc. (“Citigroup”) acted as an underwriter of the December Offering. Citigroup maintains its principal place of business at 388 Greenwich Street, New York, New York.

62. Defendant HSBC Securities (USA) Inc. (“HSBC”) acted as an underwriter of the December Offering. HSBC maintains its principal place of business at 452 Fifth Avenue, New York, New York.

63. The Defendants listed in paragraphs 56 to 62 are referred to as the “Underwriter Defendants.” NII, NII Capital, the Officer and Director Defendants, and the Underwriter Defendants are collectively referred to as the “Securities Act Defendants.”

B. Claims Against the Securities Act Defendants

64. NII is a holding company that conducts its operations through several wholly-owned subsidiaries. Among these subsidiaries is NII Capital, which acts as (among other things) the entity through which NII conducts certain financing arrangements, including the issuance of certain publicly registered debt securities. Because NII Capital is a wholly-owned subsidiary of

NII, NII Capital does not file independent periodic financial statements with the SEC, but rather is included in the consolidated financial statements filed by NII.

65. On March 24, 2011, NII and NII Capital each filed a Form S-3 registration statement (the “March Registration Statement”) with the SEC in connection with the contemplated March Offering of the Notes. On that same day, NII issued a press release announcing the proposed March Offering of the Notes by NII Capital.

66. On March 25, 2011, NII and NII Capital each filed the completed prospectus in connection with the March Offering (the “March Prospectus”) with the SEC pursuant to SEC Rule 424(b)(5). As set forth in the March Prospectus, NII Capital registered \$750 million of Notes due in 2021 that would pay interest at a rate of 7.625 percent and would be offered at 100.00 percent of face value, or \$1,000 per Note. The March Prospectus incorporated by reference the following documents previously filed by the Company with the SEC:

- (a) the Company’s annual report on Form 10-K for the year ended December 31, 2010;
- (b) the Company’s definitive proxy statement on Schedule 14A filed on April 1, 2010; and
- (c) the Company’s current reports on Form 8-K filed on March 24, 2011 and March 25, 2011.

67. The Company’s March Registration Statement and March Prospectus incorporated by reference discussions of NII’s business and prospects, including statements that emphasized the Company’s progress on its efforts to develop and deploy its new WCDMA-based network. For example, NII’s 2010 Form 10-K stated:

[W]e are in the process of developing a high performance push-to-talk service that utilizes wideband CDMA, or WCDMA,

technology in an effort to continually provide differentiated service to our customers as we acquire spectrum rights and deploy WCDMA-based networks.

* * *

We have acquired spectrum in Peru and launched service there on our WCDMA-based third generation network in December 2009. In 2009, we were assigned preliminary rights to spectrum in Chile that we intend to use to support the deployment of a third generation network that utilizes WCDMA technology. In addition, we expect to pursue opportunities to acquire additional spectrum in our other markets in the future, including through participating in the spectrum auctions that are expected to be conducted in Brazil, Mexico and Argentina to the extent new spectrum can be obtained at a reasonable cost with available financing and consistent with our overall technology strategy.

* * *

We have deployed a third generation network in Peru that utilizes WCDMA technology . . . and in the fourth quarter of 2009, we launched high speed wireless data services using air cards supported by our third generation network in Peru. . . . We plan to deploy a third generation network based on WCDMA technology that will operate . . . in Chile. We believe that the deployment of these third generation networks will enable us to offer new and differentiated services to a larger base of potential customers.¹

68. However, the Company's positive descriptions of its critical network modernization projects in the March Registration Statement and March Prospectus (whether by incorporation or otherwise) were incorrect because NII's development and deployment of its WCDMA network was proceeding poorly.

69. On December 5, 2011, NII and NII Capital each filed a Form S-3 registration statement (the "December Registration Statement") with the SEC in connection with the contemplated December Offering of the Notes. On that same day, NII issued a press release announcing the proposed December Offering of the Notes by NII Capital.

¹ All emphases are added.

70. On December 6, 2011, NII and NII Capital each filed the completed prospectus in connection with the December Offering (the “December Prospectus”) with the SEC pursuant to SEC Rule 424(b)(5).

71. As set forth in the December Prospectus, NII Capital registered an additional \$700 million of Notes due in 2021 and paying interest at a rate of 7.625 percent, which would be offered at 98.5 percent of face value, or \$985 per Note. The December Prospectus incorporated by reference the following documents previously filed by the Company with the SEC:

(a) the Company’s annual report on Form 10-K for the year ended December 31, 2010;

(b) the Company’s quarterly reports on Form 10-Q for the quarters ended March 31, 2011, June 30, 2011, and September 30, 2011; and

(c) the Company’s current reports on Form 8-K filed March 24, 2011, March 25, 2011, March 29, 2011, May 10, 2011, and November 9, 2011.

72. The March Registration Statement, March Prospectus, December Registration Statement, and December Prospectus are collectively referred to as the “Offering Documents.”

73. The Company’s December Registration Statement and December Prospectus incorporated by reference discussions of NII’s business and prospects, including statements that emphasized the Company’s progress on its efforts to develop and deploy a new WCDMA-based network. For example, the following statements from NII’s Form 10-Q for the quarter ending September 30, 2011 were incorporated into the Offering Documents:

Our existing third generation network in Peru utilizes, and our planned third generation networks in Brazil, Mexico and Chile will utilize, WCDMA technology, which is a standards-based technology that is being deployed by carriers throughout the world. *These technologies allow us to use our spectrum efficiently and*

offer multiple wireless services integrated into a variety of handset devices.

* * *

We plan to offer similar and additional voice and data services and applications on our planned third generation networks and recently launched high performance push-to-talk services on our third generation network that provides services on WCDMA networks in various metropolitan areas in Peru.

* * *

We commercially launched our third generation network in Peru in 2010 and are currently in the process of designing and building third generation networks in Brazil, Chile and Mexico using spectrum licensed to us in Chile and Mexico in 2010 and spectrum licensed to us in Brazil in 2011. We expect to begin offering third generation services in Chile early in 2012 and in Brazil and Mexico in mid-2012.

* * *

[W]e have: commercially launched services using a WCDMA-based third generation network in Peru, ***including the development and launch of high performance push-to-talk services on that network***, and taken steps to deploy new third generation networks in Brazil, Mexico and Chile, with plans to begin offering third generation services in all three of these markets in 2012.

74. Similarly, the Company's positive descriptions of its critical network modernization projects incorporated by reference into the December Registration Statement and December Prospectus were incorrect because NII's development and deployment of its WCDMA network was proceeding poorly.

75. In addition to descriptions of the Company's network development progress such as those described above, the Offering Documents, by means of documents incorporated by reference, set forth certain financial information about NII, including (among other things) the classification and valuation of assets, liabilities, and recognition of income for the full-year periods of 2009 and 2010.

76. The Offering Documents were materially false and misleading, and failed to disclose that numerous elements of the Company's financial information for the full-year periods of 2009 and 2010 were materially false, including the Company's recognition of value added taxes, capitalization of construction in progress, calculation of income tax expenses and liabilities, classification of deferred income taxes as current or noncurrent, and classification of leases as operating or capital.

77. As a result, the Company's Offering Documents were deficient and misleading at all relevant times. The misstated and omitted facts would have been material to a reasonable person reviewing the Offering Documents.

78. The Securities Act Defendants owed Plaintiff and the Class a duty to make a reasonable and diligent investigation of the statements contained in the Offering Documents to ensure that the statements contained or incorporated by reference therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

79. The Securities Act Defendants did not make a reasonable and diligent investigation of the statements contained or incorporated by reference in the Offering Documents and did not possess reasonable grounds for believing that the Offering Documents did not contain an untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

80. The false and misleading nature of the Offering Documents was revealed in part on August 7, 2012, when the Company filed a quarterly report on Form 10-Q with the SEC for the quarter ending June 30, 2012. As part of this filing, NII disclosed that certain financial statements

filed with the SEC and incorporated by reference into the Company's Offering Documents contained numerous inaccuracies. The Company admitted that

[T]he SEC's guidance requires that prior period financial statements be corrected since the correction of the cumulative impact of these errors in the second quarter of 2012 would have been material to our results of operations for the three months ended June 30, 2012 and are currently expected to be material to our projected results of operations for the year ended December 31, 2012.

The Company also stated that:

The following is a description of the areas in which these immaterial errors were identified and for which we made correcting adjustments to the prior period consolidated financial statements:

(1) *Value Added Taxes (VAT)* – We identified and corrected various immaterial errors in the recognition of value added tax expenses in Brazil reflecting both under accrual and over accrual of expenses depending on the period and transaction type;

(2) *Construction in Progress* – We identified and corrected immaterial errors related to the ***incorrect capitalization of certain expenses incurred on internally developed software projects***. The correction of these adjustments resulted in a reduction to property, plant and equipment and an increase in general and administrative expenses, as well as the adjustments to net cash flows from operating and investing activities mentioned above;

(3) *Income Taxes* – We identified and corrected immaterial errors in the calculation of income tax expense and applicable tax liabilities reflected in the prior period tax provision calculations, as well as the related income tax expense and liability effects of the pre-tax adjustments described here. We also identified and corrected a balance sheet misclassification between current and noncurrent deferred income taxes;

(4) *Leases* – We identified and corrected immaterial errors related to the ***misclassification of certain transmitter and receiver site co-location leases that were incorrectly classified as operating leases rather than capital leases***; and

(5) *Other* – We identified and corrected other immaterial errors that are not applicable to the above categories.

Despite the Company's assurances, these accounting errors were in fact material to investors and analysts. The Company's improper valuation and accounting treatment of, among other things, its lease obligations and construction in progress presented an incorrect picture of NII and its progress on and prospects for a successful development of NII's new network. These mischaracterizations of the Company and its then-current development of its new network were incorporated by reference into the Offering Documents.

81. The truth regarding the materiality of the false and misleading statements in the Offering Documents was partially disclosed when, before the markets opened on February 5, 2013, the Company issued a press release with preliminary results for the quarter and full year ended December 31, 2012. The Company disclosed that it expected to report approximately 650,000 net subscriber additions for 2012, and full-year consolidated operating revenues of \$6.1 billion. The Company also provided disappointing guidance for 2013, including: (1) "Mid-single digit growth rate for consolidated subscriber base;" and (2) consolidated revenues in the range of \$5.7 to \$5.9 billion. In response, the market price of the Notes declined by 9.39 percent to close at \$700 per Note that day.

82. An additional partial disclosure of the truth regarding the materiality of the false and misleading statements in the Offering Documents came on October 31, 2013, when NII published a press release announcing its financial results for the quarter ended September 30, 2013. The Company reported a net subscriber loss of 178,000, driven by a loss of 247,100 subscribers in its key market of Mexico, and consolidated operating revenues of \$1.1 billion. In reaction, the market price of the Notes declined by 10.94 percent to close at \$570 per Note that day.

83. The full truth regarding the false and misleading nature of the Offering Documents was not revealed until February 28, 2014, when NII issued a press release announcing its financial results for the full year and three months ended December 31, 2013, including a net subscriber loss of 247,000 including a loss of 390,000 subscribers in Mexico. The Company also reported a greater-than-expected net loss from continuing operations of \$1.6 billion, or \$9.36 per share. Prior to this time, the true materiality of the false and misleading statements contained in the Offering Documents was concealed from investors. The market price of the Notes declined by 10.58 percent to close at \$375 per Note that day.

84. Plaintiff and the Class did not know, nor in the exercise of reasonable diligence could they have known, of the untrue statements of material fact or omissions of material facts in the Offering Documents when they purchased or acquired the Notes.

85. Plaintiff and members of the Class purchased the Notes, and were damaged thereby.

C. Counts Against Securities Act Defendants Related to the Offerings

COUNT I
For Violations of Section 11 of the Securities Act
Against the Securities Act Defendants

86. Plaintiff repeats and realleges paragraphs 1 to 85, as if fully set forth herein, except that for purposes of Counts I, II and III, Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional or reckless misconduct, as these counts are based solely on claims of strict liability and/or negligence under the Securities Act.

87. This Count is brought against the Securities Act Defendants on behalf of all those who purchased or otherwise acquired the Notes pursuant or traceable to the Notes Offerings. The Offering Documents for the Notes Offerings were inaccurate and misleading, contained untrue

statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed adequately to disclose material facts, as described above.

88. The Securities Act Defendants are strictly liable for the misstatements and omissions and for the damages that Plaintiff and the other members of the Class have sustained thereby. The Securities Act Defendants are responsible for the contents and dissemination of the Offering Documents, and did not conduct a reasonable investigation or possess reasonable grounds for the belief that the statements contained in the Offering Documents were true and without omissions of any material facts and were not misleading.

89. The Securities Act Defendants issued, caused to be issued, and participated in the issuance of materially false and misleading written statements to the investing public that were contained in the Offering Documents, which misrepresented or failed to disclose, among other things, the facts set forth above. By reasons of the conduct herein alleged, each of the Securities Act Defendants violated and/or controlled a person who violated, Section 11 of the Securities Act.

90. Less than one year has elapsed between the time Plaintiff discovered or reasonably could have discovered the facts upon which this Count is based and the time this claim was brought. Less than three years have elapsed between the time that the securities upon which this Count is brought were bona fide offered to the public and the time this action was commenced.

COUNT II
For Violations of Section 12(a)(2) of the Securities Act
Against the Underwriter Defendants

91. Plaintiff repeats and realleges paragraphs 1 to 90, as if fully set forth herein, except that for purposes of Counts I, II and III, Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional or reckless misconduct, as these counts are based solely on claims of strict liability and/or negligence under the Securities Act. This Count is

brought against the Underwriter Defendants on behalf of all persons or entities who purchased the Notes issued pursuant or traceable to the Note Offerings.

92. The Underwriter Defendants were sellers, offerors, and/or solicitors of purchasers of the Notes offered pursuant to the Offering Documents. The Offering Documents contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and concealed and failed to disclose material facts. The Underwriter Defendants' actions of solicitation included participating in the preparation and dissemination of the false and misleading Offering Documents.

93. The Underwriter Defendants owed to the purchasers of the Notes, including Plaintiff and the other members of the Class, the duty to make a reasonable and diligent investigation of the statements contained in the Offering Documents to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. The Underwriter Defendants knew of, or in the exercise of reasonable care should have known of, the misstatements and omissions contained in the Offering Documents, as set forth above.

94. Plaintiff and the other members of the Class purchased or otherwise acquired the Notes pursuant to and/or traceable to defective Offering Documents. Plaintiff did not know, nor in the exercise of reasonable diligence could have known, of the false nature of the statements and omissions contained in the Offering Documents.

95. By reason of the conduct alleged herein, the Underwriter Defendants violated and/or controlled a person who violated Section 12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of the Class who hold Notes purchased in or traceable to the Notes Offerings have the right to rescind and recover the consideration paid for their Notes.

96. Class members like Plaintiff who have sold their Notes are entitled to rescission damages. Class members who continue to hold their Notes may offer to tender to the Underwriter Defendants the Notes that they continue to own, in return for the consideration paid for those Notes, together with interest thereon.

97. Less than one year has elapsed between the time Plaintiff discovered or reasonably could have discovered the facts upon which this Count is based and the time this claim was brought. Less than three years have elapsed between the time that the securities upon which this Count is brought were bona fide offered to the public and the time this action was commenced.

COUNT III
For Violations of Section 15 of the Securities Act
Against the Officer and Director Defendants

98. Plaintiff repeats and realleges paragraphs 1 to 97, as if fully set forth herein, except that for purposes of Counts I, II and III, Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging fraud or intentional or reckless misconduct, as these counts are based solely on claims of strict liability and/or negligence under the Securities Act.

99. This Claim is brought against the Officer and Director Defendants pursuant to Section 15 of the Securities Act on behalf of all persons or entities who purchased the Notes pursuant or traceable to the Notes Offerings conducted pursuant to the Offering Documents.

100. As set forth in Count I herein, the Company and NII Capital are liable pursuant to Section 11 of the Securities Act. Each of the Officer and Director Defendants was a control person of the Company and/or NII Capital with respect to the Notes Offerings by virtue of such individual's position as a senior executive officer and/or director of the Company and/or NII Capital and had direct and/or indirect business and/or personal relationships with other directors, officers, and/or major shareholders of the Company or NII Capital. By reason of their positions within the Company and/or NII Capital and/or positions on the board of directors of the Company

and/or NII Capital, the Officer and Director Defendants had the requisite power to directly or indirectly control or influence the specific corporate policies that resulted in the unlawful acts and conduct alleged in Count I.

101. Each of the Officer and Director Defendants was a culpable participant in the violations of Section 11 of the Securities Act alleged in Count I above, based on their having signed the Offering Documents and having otherwise participated in the process that allowed the Notes Offerings to be executed. The Officer and Director Defendants, by virtue of their managerial and/or board positions with the Company and/or NII Capital, controlled the Company and/or NII Capital, as well as the contents of the Offering Documents, at the time of the Notes Offerings. Each of the Officer and Director Defendants was provided with or had unlimited access to copies of the Offering Documents, and had the ability to either prevent their issuance or cause them to be corrected.

102. As a result, the Officer and Director Defendants are liable pursuant to Section 15 of the Securities Act for the primary violations of Section 11 of the Securities Act by the Company and NII Capital.

103. By virtue of the foregoing, Plaintiff and other members of the Class who purchased or otherwise acquired the Notes pursuant or traceable to the Notes Offerings are entitled to damages against the Officer and Director Defendants.

104. Less than one year has elapsed between the time Plaintiff discovered or reasonably could have discovered the facts upon which this Count is based and the time this claim was brought. Less than three years have elapsed between the time that the securities upon which this Count is brought were bona fide offered to the public and the time this action was commenced.

VI. EXCHANGE ACT CLAIMS

A. Parties

1. Plaintiffs

105. Plaintiff Iron Workers is a defined benefit pension plan based in Dorchester, Massachusetts, that provides retirement benefits for workers in the construction industry. As set forth in the attached certification, Plaintiff Iron Workers purchased the securities of the Company at artificially inflated prices during the Class Period and has been damaged thereby.

106. As set forth above, Plaintiff Boston is a defined-benefit pension plan. As set forth in the attached certification, Plaintiff Boston purchased the securities of NII Capital, a wholly-owned subsidiary of NII, at artificially inflated prices during the Class Period and has been damaged thereby.

2. Exchange Act Defendants

(a) The Company

107. Defendant NII is a telecommunications company incorporated in Delaware. NII maintains its principal executive offices at 1875 Explorer Street, Suite 1000, Reston, Virginia. NII's common stock trades under the ticker symbol "NIHD" on the NASDAQ Stock Exchange (the "NASDAQ"), which is an efficient market.

108. NII Capital is a wholly-owned subsidiary of NII and is incorporated in Delaware with principal executive offices also at 1875 Explorer Street, Suite 1000, Reston, Virginia. NII Capital's publicly-issued debt securities are fully and unconditionally guaranteed on a senior unsecured basis by NII.

(b) The Individual Defendants

109. Defendant Dussek was CEO of NII for all relevant periods prior to December 13, 2012.

110. Defendant Shindler is the Company's Executive Chairman of the Board of Directors and CEO, and has served in these capacities for all relevant periods on or after December 13, 2012.

111. Defendant Hemmady served the Company in a number of capacities during the Class Period, including as the Company's CFO for all relevant periods prior to October 17, 2012, and as COO for all relevant periods after June 14, 2012.

112. Defendant Figuereo has been the Company's EVP and CFO since October 17, 2012.

113. Defendant Gendron was the Company's Vice President and Controller (principal accounting officer) for all relevant periods prior to November 23, 2011.

114. Defendant Freiman served as the Company's Vice President, Treasurer, and Controller (principal accounting officer) for all relevant periods between November 23, 2011 and April 2, 2012, after which Freiman served only as Vice President and Treasurer.

115. Defendant Donald Neff ("Neff") served as the Company's Vice President, Finance Operations, and Controller (principal accounting officer) of the Company between April 2, 2012 and September 10, 2013. Neff signed the Company's reports on Form 10-Q filed with the SEC on August 7, 2012, November 8, 2012, February 28, 2013, May 2, 2013, and August 1, 2013. Neff also signed the Company's amended Form 10-K and two amended Forms 10-Q filed with the SEC on November 19, 2012.

116. Defendants described in paragraphs 109 through 115 are collectively referred to herein as the "Individual Defendants." Together with Defendants NII and NII Capital, the Individual Defendants are collectively referred to herein as "Defendants."

B. Substantive Allegations

1. Background

117. NII is a telecommunications company that, through its subsidiaries, operates wireless voice and data networks in Mexico, Brazil, and other countries in Latin America under the Nextel brand. As is common with many companies in NII's industry in these areas and elsewhere, NII's customers maintain customer accounts on NII's mobile communications networks, which the Company and analysts track as a prime indicator of the Company's growth and success. NII's wireless networks were the primary source of the Company's revenues and their success was crucial to its future.

118. NII Capital, a wholly-owned subsidiary of NII, from time to time acts as the issuer of securities in connection with NII's efforts to finance its operations. Debt securities issued by NII Capital are generally unconditionally guaranteed by NII and, as a result, their market prices are a function of the performance, outlook, and statements of NII. Consequently, for the purposes of the Exchange Act claims, debt securities issued by NII Capital and guaranteed by NII are considered to be securities of NII.

119. Of the areas in which NII operates, Mexico has generally represented a source of a significant portion of the Company's revenues, profits, and growth. For example, in 2009 and 2010, Mexico represented 40.45 and 37.23 percent (respectively) of all handsets with active customer accounts on NII's networks.

120. Nextel-brand wireless service generally seeks to differentiate itself from common wireless communications through the availability of its idiosyncratic, walkie-talkie, PTT communication option. PTT offers near-instantaneous connection with other PTT-enabled handsets, allowing users to talk in pairs or groups without the delay associated with dialing a standard cellular telephone number and waiting for a connection. Another benefit of PTT service

is that PTT communication time generally is not assessed against a user's wireless account minute balance, making PTT service less expensive for certain communications-intensive professions.

121. PTT technology operates on the iDEN network, a type of wireless network carried by towers specifically designed for that system.

122. The iDEN technology is a proprietary technology developed and supported by Motorola, which continues to be the only source for iDEN systems. Because of the proprietary nature of iDEN, these systems are more expensive to build and maintain than systems that use non-proprietary technologies, such as GSM and WCDMA.

123. Prior to 2005, the Nextel PTT wireless service was available in the United States through an iDEN network operated by Nextel Communications, an entity unrelated to NII. During this period, Nextel Communications was the primary purchaser of iDEN-related technology from Motorola, allowing NII to be confident of Motorola's continued commitment to provide and update iDEN technology.

124. Beginning in 2005, when Nextel Communications merged with Sprint, Sprint took over operation of the PTT-compatible iDEN service in the United States. However, industry analysts began to question whether Sprint would continue to support iDEN-based PTT service in the future because of the limited commercial success of this service in the United States. As a result, Sprint's continuing financial support of Motorola's production of iDEN-related technology was also no longer certain.

125. By 2008, it had become apparent to industry analysts that the PTT technology was declining in popularity in the United States, causing Sprint to rethink its provision of costly iDEN service in the United States. Although Sprint publicly had committed to operate its iDEN

network through at least 2010, the declining popularity of PTT in the United States and the prospect that iDEN networks might no longer be available in the United States by 2013 forced NII to realize that it could no longer rely on Motorola to continue to develop and produce iDEN technology at economically feasible prices.

126. This uncertainty led the Company to launch an effort to rapidly transition to a new network using the less expensive non-proprietary WCDMA technology beginning in 2009. The success of this effort to build a new network based on non-proprietary technology was essential to the Company's future growth and success.

127. A crucial part of NII's network development strategy involved constructing new WCDMA-service radio antenna co-location towers.

128. As part of this major technological transition, NII determined to reduce its investment in fixed capital by selling and then leasing back certain of these network co-location towers.

129. In a sale/lease-back transaction, when an asset is constructed, the owner sells the asset to another entity, which owns and operates the asset, releasing investment capital back to the original owner. The asset is then leased by the original party for use in its business.

130. The sale/lease-back transactions required NII to determine whether these leases should be accounted for as operating leases or capital leases. Generally, operating lease treatment allows the lessee to incur lower expenses in earlier lease periods and avoid including the lease as a balance sheet liability. Consequently, companies commonly prefer to account for leased equipment under operating lease rules because such treatment: (1) yields greater net income in early lease periods; and (2) records lower total liabilities and therefore presents greater equity values and better leverage ratios.

131. However, in order to classify a lease as an operating lease under GAAP, four specific criteria must be met:

- (a) the lease must not include a “bargain sale” term—*i.e.*, the parties cannot agree for the lessee to purchase the asset at a discounted price at the time of the lease;
- (b) the term of the lease must not represent more than 75 percent of the useful life of the asset;
- (c) the present value of all lease payments must not represent more than 90 percent of the fair market value of the asset; and
- (d) the lessee cannot assume ownership of the asset at the termination of the lease under the terms of the agreement.

Although the application of the first and last criteria is relatively straightforward based on the terms of the lease, the proper application of the criteria relating to asset life and value relies on the use of reasonable and accurate estimates of these figures by the lessee’s management.

132. The Company determined to account for its transactions as operating leases even though by the end of 2009, NII knew that it was failing in its efforts to design, construct, and launch new WCDMA networks to provide a high-value, long-term asset base for the Company’s future service.

133. During the fourth quarter of 2009, NII launched its 3G data network in Peru. By the end of 2009, Company managers knew or were reckless in their disregard of the fact that the new Peru network was not able to provide the 3G voice and PTT services that they knew NII would have to offer to remain competitive in its key markets. As a result, Company managers knew that these network assets that were the subject of sale/lease-back arrangements did not have the required asset life or asset value to justify operating lease accounting treatment.

134. In the midst of these struggles, on February 16, 2010, NII filed a Form 8-K with the SEC reporting that the Company had entered into a material definitive agreement with Grupo

Televisa, S.A.B. (“Televisa”), a Mexican corporation, pursuant to which Televisa would acquire a 30 percent equity interest in NII’s Mexican operating subsidiary, Nextel Mexico, for an aggregate purchase price of \$1.44 billion (the “Televisa Agreement”). The Televisa Agreement further granted Televisa an option to purchase an additional 7.5 percent of Nextel Mexico.

135. The Televisa Agreement was an important part of NII’s plan for growth and future network upgrade efforts because it would provide both: (1) hundreds of millions of dollars for general corporate purposes that the Company could use to upgrade services in any area; and (2) millions of dollars for development of the Company’s networks in Mexico, one of NII’s most important markets.

136. Televisa, as a prospective investor in NII, recognized the importance of the accuracy of NII’s financial statements. The Televisa Agreement was explicitly premised on NII’s financial statements and other SEC filings being free of false and misleading statements. Specifically, the Televisa Agreement provided in part:

3.9 Reports and Financial Statements; Internal Control.

(a) NII has filed all forms, documents, statements and reports required to be filed with the SEC since January 1, 2007 (the “NII SEC Documents”). As of their respective dates, or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing prior to the Effective Date, the NII SEC Documents complied, and each of the NII SEC Documents filed subsequent to the date of this Agreement will comply, in all material respects with the Securities Act, the Exchange Act and the Sarbanes-Oxley Act of 2002, as the case may be, and the applicable rules and regulations promulgated thereunder. As of the time of filing with the SEC, *none of the NII SEC Documents so filed or that will be filed subsequent to the date of this Agreement contained or will contain, as the case may be, any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading*, except to the extent that the information in such NII SEC Document has been amended

or superseded by a later NII SEC Document filed prior to the Effective Date.

* * *

4.5 Financial Statements. The Company has previously delivered to the Investor correct and complete copies of its audited consolidated financial statements as of and for the year ended December 31, 2008 (the “Audited Statements”) and its unaudited consolidated financial statements as of and for the nine months ended September 30, 2009 (the “Unaudited Statements” and, together with the Audited Statements, the “Company Financial Statements”). Each of the balance sheets included in the Company Financial Statements present fairly, in all material respects, the consolidated financial position of the Company and its Subsidiaries as of the respective dates thereof, and each of the related statements of earnings, retained earnings, and cash flows included in the Company Financial Statements present fairly, in all material respects, the consolidated results of operations and cash flows of the Company and its Subsidiaries for the respective periods thereof (subject, in the case of the Unaudited Statements, to normal audit adjustments and to any other adjustments described therein, including the notes thereto), all in conformity with Mexican GAAP consistently applied during the periods involved except as otherwise noted therein. The management fees under the Intercompany Services Agreement, dated as of January 1, 2003, accrued and paid to NII as of December 31, 2008, and under the Intercompany License Agreement and the Intercompany Services Agreement, effective as of January 1, 2009, paid to NII during 2009 by the Company and its Subsidiaries are accurately reflected as a separate line item in the Company Financial Statements.

137. Further, Televisa recognized the independently critical nature of the possibility that undisclosed liabilities—such as those created by the mis-classified leases—could exist, and required that NII disclaim any such concealed liabilities in the Televisa Agreement separately and in addition to the statement relating to the accuracy of the Company’s SEC filings:

3.10 No Undisclosed Liabilities. Except (a) as set forth or reserved against in NII’s consolidated balance sheets (or the notes thereto) for the fiscal year ended December 31, 2008 included in the NII SEC Documents filed prior to the Effective Date, (b) for transactions contemplated by this Agreement and (c) for liabilities and obligations incurred in the Ordinary Course of Business since December 31, 2008, neither NII nor any of its Subsidiaries has any

liabilities or obligations, whether or not accrued, absolute, contingent or otherwise and whether due or to become due, that would, individually or in the aggregate, be material to NII and its Subsidiaries taken as a whole.

138. The full terms of the Televisa Agreement were not disclosed to the investing public until the text of the Televisa Agreement was included as an exhibit to the Company's quarterly report for the period ending March 31, 2010, filed with the SEC on May 6, 2010.

2. False and Misleading Statements

139. Prior to the markets' open on February 25, 2010, NII issued a press release announcing its financial results for the fourth quarter and full year of 2009. The Company reported: (1) net subscriber additions of more than 347,000 for the quarter and 1,185,000 for the full year; and (2) consolidated operating revenues of \$1.2 billion for the quarter and \$4.4 billion for the year. The Company also offered guidance for 2010, including: (1) net subscriber additions in the range of 1.275 million to 1.375 million; and (2) operating revenues in the range of \$5.2 billion to \$5.4 billion.

140. In connection with these results, CEO Dussek stated in part:

For the year we grew our subscriber base by 20%, and when comparing our results on a constant currency basis, we increased our revenues by 19% and increased our [operating income before depreciation and amortization ("OIBDA")] by 25%. We expanded our network to about 15 million additional people during the year, with most of that expansion in Brazil. We believe these investments will continue to enhance our brand and visibility, positioning NII to generate more profitable growth in the future.

CFO Hemmady stated in part:

We will continue to pursue strategies that are designed to provide the flexibility we need to respond to changes in the economic and competitive environment and that position us to deliver on our profitable growth strategy. . . . We believe our strong liquidity position and flexible capital structure put us in a great position to pursue these opportunities, all while maintaining our disciplined

approach to capital allocation that has enabled us to be successful in the past.

141. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

Turning to the status of implementing [NII's] 3G strategy, we believe we've made significant progress throughout 2009 on a number of initiatives. In Peru, we successfully launched our 3G network at the end of the fourth quarter and are now offering mobile broadband services in that market. Our 3G network overlay covers 16 million people and we are encouraged by the early acceptance of our broadband offerings.

Later, as part of the question-and-answer session, CFO Hemmady participated in the following exchange:

[Analyst]: My question is related to your Peruvian operations. You said that you spent about 25 to 30 million in OpEx related to 3G. Is most of that expense on launching of the service, more like advertising and marketing? Or is it more leasing of lines? . . . Because I'm just a little concerned that as you launch your wireless broadband, especially in Peru or even elsewhere, it can impact your margins quite a bit given that you don't have the backhaul backbone and you have to lease, spend a lot of money leasing infrastructure.

CFO Hemmady: The \$25 to \$30 million we've spent over the last two years, which is slightly less than \$2 per [point of presence, or "POP"] in OpEx, is related to—we have sites about 600 sites that we have. It's those kinds of costs. It's not as much the launch marketing costs. As I've said, those marketing costs we expect to start getting more into as we go into 2010. Now to address your question on, you know your concern that you raised about potential drag on margin, Peru as you know . . . has been a little bit unique for us. We made a very deliberate choice of going to WCDMA because of the scale benefits as well as the ecosystem benefits. Because of which we have decided to launch Peru in the manner we are launching, which is start with data cards; go to kind of non-PTT voice; and then going into 2011 deploy push-to-talk. And we should be, we would expect to gain a lot of traction going into 2011 as we launch push-to-talk. When we do this in some of our other markets like Brazil and Mexico, we hope to have all of these at the time of launch and there will be not—there will be very minimal time lag as we launch data, voice and push-to-talk. . . .

[Analyst]: But has your experience so far with wireless broadband in Peru changed, say, your opinion of what wireless broadband is? In terms of like a lot of the other operators in Brazil and elsewhere, they launched wireless broadband very enthusiastically and then realized, gee, the margins and returns are not that great, although there is demand for it. And they pulled back a bit. Is that what your experience has been as well?

CFO Hemmady: No, we have launched now for the last—we have two months under our belt. We feel very optimistic about what we're seeing up to now. Right now, the product is data cards. We feel very good about it. Throughout the year, we will give you more color as we have more experience under our belt there. But *we feel very good about what we are doing there. We expect to gain a very fair share of the data card market in 2010.* So we have really not changed our mind any. *If anything we've changed our mind in a more positive fashion.*

142. In response to these positive statements, NII's stock price rose, increasing \$0.42 per share to close at \$37.87 per share on February 25, 2010. However, these results were false and misleading because they included false information, including accounts relating to value-added taxes, income taxes, and capital and operating leases that were incorrectly valued and/or classified.

143. Later that day, after the market closed, NII filed its Annual Report on Form 10-K with the SEC for 2009, which included substantially similar financial results as set forth in the Company's earlier press release, as well as setting forth the following figures as part of the Company's consolidated statements of operations:

Service and other revenues	\$4,153,548
Cost of service	1,225,222
Depreciation	404,062
Interest expense, net	(218,844)

However, the improper classification of leases, among other errors, rendered these figures false and misleading, and such misstatements reinforced the artificially positive image of NII and the progress and development of NII's new network put forth by Defendants.

144. NII's 2009 Form 10-K also discussed the 3G infrastructure that the Company was constructing in Latin America. Among other things, the Company declared:

We have . . . acquired licenses of spectrum outside the 800 MHz band in Peru and Chile that can be used to support other wireless technologies in the future. We intend to use that spectrum to support the deployment of a new third generation network that utilizes WCDMA technology. Nextel Peru launched third generation service in December 2009, and Nextel Chile is currently in the process of constructing its third generation network. Nextel Chile expects to begin providing third generation service offerings in 2011.

* * *

During 2009, we expanded the geographic coverage of our networks, *as well as their capacity and quality*. This expansion, which was focused primarily in our two largest operating markets, Mexico and Brazil, was a part of our strategy to expand our networks' geographic coverage and capacity where necessary to meet the growing demand of our customers. During 2010, we expect to continue to enhance our networks by building additional transmitter and receiver sites to improve both our geographic coverage and *to meet the capacity needs of our growing customer base*.

145. The Company's 2009 Form 10-K also included a certification by CEO Dussek, incorporated therein as Exhibit 31.1, which stated:

I, Steven P. Dussek, certify that:

1. I have reviewed this annual report on Form 10-K for the period ended December 31, 2009 of NII Holdings, Inc.;

2. *Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;*

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) *Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;*

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

The Company's February 25, 2010 Form 10-K also included a substantially similar certification signed by CFO Hemmady as Exhibit 31.2.

146. On March 8, 2010, NII filed a Form 8-K with the SEC for the purpose of adding a fourteenth note to the Company's financial statements as set forth in its February 25, 2010 Annual Report to provide certain condensed consolidating financial information in connection with then-outstanding debt issued by NII Capital. Among other things, the Company's March 8, 2010 Form 8-K discussed the status and terms of financing arrangements related to NII's operations in Brazil and Mexico, including the requirement that certain financial ratios be maintained. The Form 8-K also described certain elements of the Company's accounting for capital leases:

Other Capital Lease Obligations. Under the master lease agreement with American Tower, in certain circumstances, Nextel Mexico and Nextel Brazil are permitted to co-locate communications equipment on sites owned by American Tower. Nextel Mexico and Nextel Brazil account for the majority of these co-location agreements *as capital leases*.

147. Securities analysts recognized the importance of NII's plan to develop and deploy its next-generation WCDMA-based network and keenly focused on the Company's discussions of its progress. For example, one analyst from Deutsche Bank noted:

While iDEN technology has served NII very well in capturing a niche market, *investors have been concerned about the risk of the technology getting obsolete. The adoption of WCDMA (3G) has helped NII reduce the risk of its technological evolution that has punished the company's valuation.* While technology risk will not be completely eliminated until the company is able to successfully deploy high quality Push-to-Talk (PTT) on 3G network, it has decreased significantly.

Rizwan Ali & Miguel Garcia, *3G Roll-Out—What Does It Mean?*, Deutsche Bank Sec., Inc., Apr. 7, 2010.

148. Prior to the markets' open on April 29, 2010, NII issued a press release announcing its financial results for the first quarter ended March 31, 2010. The Company reported net subscriber additions of 377,000 and consolidated operating revenues of \$1.28 billion. In connection with these results, CEO Dussek stated in part:

We are off to a tremendous start for the year, delivering excellent financial and operational results highlighted by significant improvement in churn and a record level of OIBDA during the quarter. The foundation for our first quarter results was created last year when we implemented strategies to enhance customer retention and improve the quality of our customer base. The success of these strategies is evidenced across all of our markets, where churn levels have improved substantially when compared to the first quarter of last year. These efforts have enabled us to keep our highest value subscribers and grow our business profitably.

CFO Hemmady stated in part:

Our balanced approach to growth and profitability drove our strong financial performance as we generated a 33% increase in revenue and a 39% increase in OIBDA over the first quarter of last year. Continued improvement in the economic conditions in our markets and our strong focus on customer retention resulted in solid net subscriber growth, driving a 20% increase in our consolidated subscriber base compared to the end of the first quarter of 2009. *We believe that the investments that we have made and will continue to make in our business will enhance our position as one of the premier wireless providers in Latin America.*

149. After the markets closed on May 6, 2010, NII filed its quarterly report on Form 10-Q for the quarter ended March 31, 2010, which included the same financial results previously reported in the Company's April 29, 2010 press release. The Form 10-Q also included certifications substantially similar to those described in paragraph 145.

150. However, the improper classification of leases and improper capitalization of construction in progress, among other errors, rendered the figures reported by the Company in its May 6, 2010 Form 10-Q for service and other revenues, costs of service, selling, general and administrative expenses, depreciation, net interest expense, net property, plant and equipment,

long-term debt, and retained earnings false and misleading, and such misstatements reinforced the artificially positive image of NII and the progress and development of NII's new network put forth by Defendants.

151. Prior to the markets' open on July 29, 2010, NII issued a press release announcing its financial results for the second quarter ended June 30, 2010. The Company reported net subscriber additions of 392,000 and consolidated operating revenues of \$1.35 billion. In connection with these results, CEO Dussek stated in part:

We delivered excellent results for the quarter and the first half of the year highlighted by robust subscriber growth and strong OIBDA results in each of the first two periods. These results reflect our balanced approach to growth and profitability, which is built on strategies designed to improve the quality of our customer base and customer retention across all of our markets. We have doubled our subscriber base over the past three years, while maintaining our focus on profitability with OIBDA growing 67% during that period. We believe the opportunity for profitable growth in Latin America is significant, and that our differentiated approach and *the high quality of our expanding services will position us to capture this growth in the future.*

CFO Hemmady stated in part:

Our strong operational performance in the first half of the year drove outstanding financial results as we generated a 28% increase in revenue and a 30% increase in OIBDA over the second quarter of last year. Economic conditions reflect continued stability in our markets, and when coupled with our intense focus on customer retention, we generated a 22% increase in our consolidated subscriber base compared to the end of the second quarter of 2009. In all, we believe we are well on our way to delivering another year of substantial growth and profitability. As a result of our strong operational trends expected for the remainder of the year, we are raising our 2010 guidance.

152. The Company raised guidance for the full year of 2010 for, among other things: (1) net subscriber additions from a range of 1.275 to 1.375 million to a range of 1.450 to 1.525 million; and (2) revenue from a range of \$5.2 to \$5.4 billion to a range of \$5.4 to \$5.5 billion.

153. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

We see an improving regulatory landscape in Brazil. We are continuing to pursue spectrum opportunities in this market. In addition, recent reports of possible reductions of mobile termination rates have the potential to enhance the competitive environment and provide opportunities for us to reduce cost over the long-term.

Later, as part of the question-and-answer session, CEO Dussek participated in the following exchange:

[Analyst]: My second question was on Brazil. There was lots of press speculation, rumors earlier on in the quarter about other operators trying to make you change the way that you sell services. I just wonder whether—how that was going, whether that was having any sort of impact on your business?

CEO Dussek: That policy has been in place in the regulatory environment for years. We've always followed it. The sale to individuals was the question. As we conduct our activity, when we sell to individuals, we verify that is being used in a business environment. So we've always followed the letter of the law with respect to that, and we continue to do so. There is no impact to what we are doing today.

154. After the markets closed on August 6, 2010, NII filed its quarterly report on Form 10-Q for the quarter ended June 30, 2010, which included the same financial results previously reported in the Company's July 29, 2010 press release. The Form 10-Q also included certifications substantially similar to those described in paragraph 145.

155. However, the improper classification of leases and improper capitalization of construction in progress, among other errors, rendered the figures reported by the Company in its August 6, 2010 Form 10-Q for service and other revenues, costs of service, selling, general and administrative expenses, depreciation, net interest expense, net property, plant and equipment, long-term debt, and retained earnings false and misleading, and such misstatements reinforced the

artificially positive image of the progress and development of NII's new network put forth by Defendants.

156. On October 18, 2010, NII filed a Form 8-K with the SEC reporting that the Company and Televisa had terminated the Televisa Agreement. The Company blamed the loss of this key cash infusion on a stalemate regarding risk issues, explaining in part that:

The decision to terminate the [Televisa] Agreement stems from the parties' differences in views on the regulatory and other risks associated with the investment and their inability to reach agreement on modifications to the [Televisa] Agreement that would address those risks.

157. Prior to the markets' open on October 28, 2010, NII issued a press release announcing its financial results for the quarter ended September 30, 2010. The Company reported net subscriber additions of 436,000 and consolidated operating revenues of \$1.45 billion. NII also noted in its financial statements that the Company's cost per gross add ("CPGA," a measure of how much the Company had to spend to gain additional subscribers) for the quarter was reduced by \$28 million as the result of a tax credit received in Brazil. In connection with these results, CEO Dussek stated in part:

We again delivered excellent results for the quarter highlighted by record levels for both subscriber growth and OIBDA during the period. Our disciplined approach to profitable growth guided us through an economic downturn last year and is now enabling us to deliver outstanding results in 2010. Our efforts to improve the quality of our customer base and more stable economic environments in our markets helped us to achieve both excellent growth in our subscriber base and strong results for revenues and OIBDA. The strength of our business, combined with our differentiated approach to meeting our customers' needs and our efforts to expand our market opportunities by adding 3G capabilities, position NII to pursue significant growth opportunities in the Latin American wireless marketplace.

CFO Hemmady stated in part:

Our continued focus on our key operating metrics coupled with our ability to attract and meet the needs of our high value customers drove impressive operational and financial results for the quarter, as we generated a 22% increase in our ending subscriber base and a 30% increase in OIBDA over the third quarter of last year. We continue to capitalize on the tremendous opportunity that is available to us in our markets, and *we believe that we are well positioned to generate strong growth and profitability* as evidenced by the fact that we are trending ahead of our updated 2010 guidance announced in July.

158. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

We are excited about the opportunities available to us and believe *we have positioned the Company to continue to pursue and capture profitable growth*. We believe there are several key factors and recent developments that will enhance our future success.

First, we have nationwide 3G spectrum in Peru, Chile and now in Mexico. The auction is scheduled to take place in Brazil later this year. This spectrum will support our deployment of 3G networks, enabling us to expand our target market and offer new and differentiated services that meet our customers' needs.

In Mexico, while the investment agreement with Televisa did not close, *we are in an excellent position to make the investments necessary to pursue our 3G strategy* using our recently acquired AWS spectrum.

Second, *we continue to see positive results in our development of high performance push-to-talk capability for our 3G platforms*. Field trials are progressing very well in Peru. The technology is performing to our expectations and we are looking forward to our commercial launch of this product in Peru during the first half of next year.

And finally, we are encouraged by the recent reductions in mobile call termination rates in Peru, and by the announcement that reductions may also be implemented in Brazil. These and similar reductions in our other markets could have a significant impact on our cost structure. Combining all of these developments with the fact that we have one of the most valuable customer bases in the

wireless market, we believe that NII is well-positioned to continue to pursue profitable growth in the future.

Later, as part of the question-and-answer session, CEO Dussek participated in the following exchange:

[Analyst]: [In] Mexico, you had nice year-over-year growth but nets were down a little bit sequentially. You obviously had very strong [average revenue per subscriber (“ARPU”)] and churn levels in Mexico though, to offset that. Just was wondering if you could give us some color regarding the dynamics that you saw[.]

CEO Dussek: [W]e are very pleased with the overall results that we saw in Mexico in the third quarter. As you mentioned on a year-over-year basis, we saw subscriber growth 12% and we believe we are certainly capturing our fair share of the incremental growth in the postpaid marketplace. So, we are very pleased with what has transpired in Mexico.

159. After the markets closed on November 9, 2010, NII filed a Form 8-K/A to amend its previously reported results released on October 28, 2010. In the amendment, NII disclosed that:

After additional review and analysis, we determined that at this time *we do not have the documentation required to support the recognition of the revenue-based tax credit and have eliminated the impact of that tax credit in the financial statements and related disclosures included in our September 30 Form 10-Q.* . . . [This] resulted in a \$17.8 million reduction, compared to the amounts reflected in the October 28 Press Release, in our consolidated net income for the quarter

160. Later that same day, NII filed its quarterly report on Form 10-Q for the quarter ended September 30, 2010, which included these amended financial results. The Form 10-Q also included certifications substantially similar to those described in paragraph 145.

161. However, the improper classification of leases and improper capitalization of construction in progress, among other errors, rendered the figures reported by the Company in its November 9, 2010 Form 10-Q for service and other revenues, costs of service, selling, general

and administrative expenses, depreciation, net interest expense, net property, plant and equipment, long-term debt, and retained earnings false and misleading, and such misstatements reinforced the artificially positive image of NII and the progress and development of NII's new network put forth by Defendants.

162. Prior to the markets' open on February 24, 2011, NII issued a press release announcing its financial results for the quarter and full year ended December 31, 2010 titled *NII HOLDINGS DELIVERS OUTSTANDING PERFORMANCE FOR 2010*. For the quarter, the Company reported net subscriber additions of 436,000 and consolidated operating revenues of \$1.52 billion. The Company also offered guidance for 2011, including: (1) net subscriber additions of approximately 1.7 million; and (2) consolidated operating revenues of approximately \$6.6 billion. In connection with these results, CEO Dussek stated in part:

NII delivered strong growth and profitability in 2010, exceeding our goals for net subscriber additions, revenues, and OIBDA that we outlined for the year. In 2010, we grew our subscriber base by 22%, increased our revenues by 27% and increased our OIBDA by 29%. During 2010, we also successfully bid for 3G spectrum in our largest markets, Mexico and Brazil. We believe our plans to deploy 3G networks will position us to pursue more profitable growth in the future by enabling us to target additional customer segments and provide innovative broadband wireless services to our high value customer base.

CFO Hemmady stated in part:

Our team delivered outstanding results in 2010, capitalizing on a solid rebound in economic activity and driving growth, while generating record levels of profitability. The strength of our underlying operations, combined with our plans to use our recently acquired spectrum to deploy new 3G networks, has positioned us to drive success as we compete in a broadband centric world. In 2011, we will commit substantial time and resources to capture this opportunity by building our planned 3G networks, but we will not lose focus on what brought us to where we are today—delivering high quality services that meet the needs of our customers. We believe that our strong liquidity position and flexible capital structure puts us in a great position to execute on all of these

opportunities, while maintaining our disciplined approach to capital that has enabled us to be successful in the past.

163. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

As you just heard, 2010 was another year of record performance by our team. It was also a transformative year for our Company as we achieved critical milestones in our pursuit of profitable growth in the future. Compared to only a year ago, we have acquired the spectrum necessary to deploy our 3G networks in Brazil and Mexico. *We have successfully tested our push-to-talk technology on the W-CDMA platform and we experienced great success in our first 3G market launch in Peru.*

* * *

We have also built a very strong brand by providing the highest quality differentiated services and customer support. Looking forward, we are invigorated by what our team can deliver in the future with an expanded menu of services, a larger target market and *our strong position in the fast growing Latin America wireless market.*

Later, as part of the question-and-answer session, CEO Dussek participated in the following exchange:

[Analyst]: [C]an you talk about how you see 3G expansion increasing your addressable market in Mexico and Brazil and just where do you see the biggest opportunity? Is it selling into sort of a higher-end corporate enterprise account that really needs a data product or is it converting that top 5% or 10% of high usage prepaid customers that are probably more appropriate for a postpaid type plan?

CEO Dussek: Well, first of all, we have said a number of times that our approach here is evolutionary and a complementary strategy to our existing business model and expanding our addressable market, we are nearly doubling the size of that addressable market. So, when you just say is it more coming from the corporate side or the high-value consumer, it is coming from both. Our target obviously *we now feel we are going to be able to go after that higher value consumer. . . .* So we look at—with the expansion of this addressable market, we will get more high value consumers. *We will get more large and corporate accounts* and

so we look at it as helping both of those particular segments. And *we are expanding distribution*, as I talked about in Peru, but if you look across the board, we are expanding that ahead of the launch of these networks. We are expanding it throughout all of our markets from 2009 to the end of 2011, we will see roughly anywhere from 30% to 35% increase in the number of doors that we are selling through.

164. That same day, after the markets closed, NII filed its Annual Report on Form 10-K for 2010, which included the same financial results previously reported in the Company's February 24 press release, as well as setting forth the following figures as part of the Company's consolidated statements of operations for the full year:

Service and other revenues	\$5,347,724
Cost of service	1,506,019
Selling, general and administrative	1,941,789
Depreciation	518,774
Interest expense, net	(342,204)

As part of the Company's consolidated balance sheet, the Company's 2010 Form 10-K set forth the following figures:

Property, plant and equipment, net	2,960,046
Long-term debt	2,818,423
Retained earnings	2,015,950

However, the improper classification of leases and improper capitalization of construction in progress, among other errors, rendered these figures false and misleading, and such misstatements supported, contributed to and reinforced the artificially positive image of NII and the progress and development of NII's new network put forth by Defendants. The Company's 2010 Form 10-K also included certifications substantially similar to those described in paragraph 145.

165. Equity analysts continued to view NII's purported progress on the development and deployment of its modernized network to be a critical element for the Company's prospects and valuation. For example, as analysts from William Blair & Co. explained:

[NII] issued a favorable 2011 outlook and a 3G rollout schedule for Brazil and Mexico, alleviating investor apprehension that the new networks' costs were going to be greater than the historical average. As 3G provides [NII] with the opportunity to reaccelerate growth by expanding the carrier's target market and increasing data services revenue, we believe shares are undervalued at current levels, and reiterate our Outperform rating.

Jim Breen *et al.*, *Fourth-Quarter Guidance and 2011 Outlook Positive; 3G Coverage Timeline Suggests Capex Will Tail in 2013*, William Blair & Co., Feb. 24, 2011.

166. On March 24, 2011, NII and NII Capital substantially concurrently filed the March Registration Statement on Form S-3 with the SEC in connection with the March Offering of the Notes. The March Registration Statement incorporated by reference the Company's annual report on Form 10-K for the year ended December 31, 2010, and definitive proxy statement on Schedule 14A filed on April 1, 2010. The March Registration Statement was signed by, among others, Defendants Dussek, Hemmady, and Gendron. That same day, NII issued a press release announcing the March Offering of the Notes.

167. On March 24, 2011, NII issued a press release announcing the pricing of the March Offering of the Notes. The next day, NII and NII Capital substantially concurrently filed the March Prospectus with the SEC on Form 424(B)(5).

168. Prior to the markets' open on April 28, 2011, NII issued a press release announcing its financial results for the quarter ended March 31, 2011. The Company reported net subscriber additions of 403,000 and consolidated operating revenues of \$1.62 billion. In connection with these results, CEO Dussek stated in part:

We are excited about the way we started the year, delivering record levels of OIBDA and strong subscriber growth during the first quarter. We continue to drive profitable growth in our business as we target customers who value our key differentiators including our prestigious brand, world class customer service and growing Push-to-Talk (PTT) community. ***Our strong growth in both subscribers and cash flow results reflect our success in attracting***

and retaining high-value customers and driving operational efficiencies. The addition of our 3G platform in Peru and our planned 3G network deployments in Brazil, Mexico and Chile will enable us to provide more products and services designed to meet the needs of an expanded group of potential customers and help to ensure we are positioned to drive sustained levels of profitable growth in the future.

CFO Hemmady stated in part:

The strong value proposition of our service offering and our focus on attracting and retaining profitable customers has enabled us to drive impressive financial and operational results for the quarter, as we generated a 21 percent increase in our ending subscriber base, a 26 percent increase in revenues and a 26 percent increase in OIBDA over the first quarter of last year. We believe that we are well-positioned to capitalize on the significant opportunity for growth that is available to us in our markets, but ***will continue to be disciplined in our operational focus as well as our capital allocation to ensure that we are generating significant returns on our current platform as well as our investment in future platforms.***

169. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

We were pleased with the results of all of our markets in the quarter. Our operations in Brazil and Peru were key drivers of our subscriber growth for the quarter, highlighted by a 32% increase in Nextel Brazil's subscriber base compared to the same period last year. In Peru, the launch of our 3G mobile broadband services enhanced the visibility of our brand and our sales of iDEN voice services, contributing to a 35% year-over-year increase in Nextel Peru's ending subscriber base.

Our business is growing as customers continue to recognize the value and reliability of our services and the benefits of our high quality customer care and support. In fact, in terms of rates of revenue growth, we are among the top 10 fastest growing wireless companies in the world. With the spectrum we have acquired and our plans to deploy 3G networks, ***we are now in a position to evolve our business to generate more growth and profitability in the years to come.***

Later, as part of the question-and-answer session, CEO Dussek participated in the following exchange:

[Analyst]: [J]ust from our check, it appears that America Movil and Telefonica are doing a little bit more in terms of mid-tier smartphone promotions. Do you guys have any new iDEN devices coming out this year to help on the handset side?

CEO Dussek: Let me talk about the competitive question and handset question you asked. We've seen the same thing you are seeing in terms of America Movil and Movistar with that mid-tier activity. But *we haven't seen anything that says it's getting drastically more competitive*. Having said that, we have launched in the mid-tier specifically, we have launched 3 new handsets to date and we have 1 or 2 more planned between now and the end of the year. Our product launches in the first quarter—and again—they were probably towards the tail end of the first quarter—are out there now and we have a couple more coming down the pipe.

170. After the markets closed on May 5, 2011, NII filed its quarterly report on Form 10-Q for the quarter ended March 31, 2011, which included the same financial results previously reported in the Company's April 28, 2011 press release, as well as setting forth the following figures as part of the Company's consolidated statements of operations:

Service and other revenues	\$ 1,546,328
Selling, general and administrative	535,557
Depreciation	146,796
Interest expense, net	(81,159)

As part of the Company's consolidated balance sheet, the Company's May 5, 2011 Form 10-Q set forth the following figures:

Property, plant and equipment, net	3,092,450
Long-term debt	3,576,499
Retained earnings	2,112,708

However, the improper classification of leases and improper capitalization of construction in progress, among other errors, rendered these figures false and misleading, and such misstatements supported, contributed to and reinforced the artificially positive image of NII and

the progress and development of NII's new network put forth by Defendants. The Company's May 5, 2011 Form 10-Q also included certifications substantially similar to those described in paragraph 145.

171. Prior to the markets' open on July 28, 2011, NII issued a press release announcing its financial results for the quarter ended June 30, 2011. The Company reported net subscriber additions of 382,000 and consolidated operating revenues of \$1.75 billion. In connection with these results, CEO Dussek stated in part:

Our strong operational metrics and focus on profitable growth drove the highest level of quarterly OIBDA in our history, supported in part by the recent decision by the regulators in Mexico to reduce mobile termination rates. ***Our business continues to build momentum*** as we prepare to launch our Push-to-Talk (PTT) service on our new W-CDMA network in Peru and deploy our 3G networks in Brazil, Mexico and Chile. ***We believe these new networks will continue to differentiate our services from the competition, while providing us with more products and services that meet the needs of our valuable customer base.***

CFO Hemmady stated in part:

Our focus on attracting and retaining the most valuable customers in the industry has enabled us to deliver strong results during the period, as we generated a 20 percent increase in our ending subscriber base, a 30 percent increase in revenues and a 36 percent increase in OIBDA over the second quarter of last year. While our customer growth for the second quarter puts us slightly behind our mid-year goal, we have taken steps that we believe will position us to improve our sales productivity in the second half of the year. Taking into consideration those actions and our strong revenue and OIBDA growth during the first half of the year, we are increasing our 2011 guidance with respect to revenues, OIBDA and capital expenditures and maintaining our guidance with respect to net subscriber additions.

172. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

We generated strong year-over-year growth in revenues, OIBDA and subscribers. We are encouraged by the improving subscriber

growth trend we experienced in Mexico as we exited the quarter. ***We have one of the most valuable customer bases in the business, and we are among the fastest growing wireless companies in the world.***

Later, as part of the question-and-answer session, CEO Dussek participated in the following exchange:

[Analyst]: Just was wondering if you could [drill] down a little bit on both of those trends that we saw in the quarter and give us perhaps a little bit more flavor for what we should expect and how the second half of the year—what kind of trajectory we should expect on both of those fronts going into the back half?

CEO Dussek: First of all as you noted, as I mentioned in the opening comments, we recognize that we did miss our own expectation on net adds overall throughout the company. Let me start first of all with Mexico, where the primary reason for nets being lower than what we expected was related to . . . three factors. The first is . . . modifications within our distribution channels, most notably in the indirect side, which did cause some short-term disruption. . . . We made changes, these modifications which created this disruption which took a little bit longer in terms of time for the channels to absorb and integrate into their operating mode. . . . The second factor that I will talk about is the competitive environment. The competitive environment in Mexico continues to be challenging but it always has been for us. In Q2 we did see a bit more intensity in the competitive world, created through primarily through new promotional activity. Again, this situation isn't new to us. ***We've competed very effectively in these periods of heavier promotional activity in the past and we expect we will continue to do so.*** To that end, let me say again, to address your question of kind of going forward in the second half of the year, that we did say in our comments and that as we exited the quarter in the latter part of June primarily, we saw that a lot of that disruption have subsided and that we experienced much better growth trends towards the end of the June period. We have seen those trends continue into early Q3.

173. After the markets closed on August 4, 2011, NII filed its quarterly report on Form 10-Q for the quarter ended June 30, 2011, which included the same financial results previously reported in the Company's July 28, 2011 press release, as well as setting forth the following figures as part of the Company's consolidated statements of operations:

Service and other revenues	\$ 1,670,327
Cost of service	448,779
Selling, general and administrative	618,092
Depreciation	161,827
Interest expense, net	(95,715)

As part of the Company's consolidated balance sheet, the Company's August 4, 2011 Form 10-Q set forth the following figures:

Property, plant and equipment, net	3,318,245
Long-term debt	3,360,681
Retained earnings	2,226,327

However, the improper classification of leases and improper capitalization of construction in progress, among other errors, rendered these figures false and misleading, and such misstatements supported, contributed to and reinforced the artificially positive image of NII and the progress and development of NII's new network put forth by Defendants. The Company's August 4, 2011 Form 10-Q also included certifications substantially similar to those described in paragraph 145.

174. On September 19, 2011, NII announced the launch of a new brand identity, including a new corporate logo, in Latin America. In connection with this announcement, the Company asserted that it was making progress in working toward the launch of its 3G networks:

“Our business continues to build momentum as we invest in developing and deploying third-generation networks in Brazil, Mexico and Chile and as we prepare to launch our Push-to-Talk (PTT) service on our new 3G network in Peru,” said [CEO] Dussek. ***“We believe these new networks, like our iDEN® technology platform, will continue to differentiate our services from the competition while providing us with more products and services to meet the needs of our valuable customer base.*** We believe that our new logo, brand identity and strategy will emphasize the value of that differentiation with our current and future customers.”

175. Less than two weeks later, on September 29, 2011, NII announced the launch of PTT Services on its new WCDMA network in Peru. Among other things, the Company claimed

that through the network it was able to meet the demands of Peruvian customers for “best in class instant communications”:

The new PTT services are tightly integrated with the broadband data services already available on the network and ***deliver an instant PTT experience that meets the expectations of Nextel Peru’s customers for best in class instant communications.*** This is a major milestone for NII and is a key component in the company’s strategy to pursue profitable growth across its markets by bringing new and innovative service offerings to its customers.

“The launch of our PTT services on our new W-CDMA network is a major technical achievement and the first time that a truly high performance PTT solution has been delivered over a commercial HSPA-enabled network,” said Alan Strauss, executive vice president and chief technology officer for NII. “Our PTT service is the primary mode of instant communication for millions of customers in Latin America, and ***the launch of this service integrated with the high-speed data capabilities of our next generation network provides our customers with a unique set of services that meet their voice and data needs,***” he added.

“We are excited about the launch of our next generation PTT services in Peru because it enables us to offer our customers a seamless, high performance PTT experience paired with a wide range of unique new capabilities and features,” said Robert Ewald, vice president of product management of NII. “As we deploy our next generation networks across our markets, ***we continue our commitment to delivering differentiated high quality wireless products and services that meet the needs of our large and growing customer base,***” he added.

176. Prior to the markets’ open on October 27, 2011, NII issued a press release announcing its financial results for the quarter ended September 30, 2011. The Company reported net subscriber additions of 433,000 and consolidated operating revenues of \$1.75 billion. The Company also provided updated guidance, including: (1) reducing projected net subscriber additions from approximately 1.7 million to 1.6 million; and (2) raising consolidated operating revenues of from approximately \$6.6 billion to \$6.8 billion. In connection with these results, CEO Dussek stated in part:

Our consolidated operating results during the quarter included improved subscriber growth, driven by a significant improvement in net subscriber additions in Mexico. ***We successfully launched our Push-to-Talk (PTT) service on our W-CDMA platform in Peru last month, and we continue to make progress on our 3G network deployments in Brazil, Mexico and Chile.*** We also recently launched a new brand identity as we build on the strength of the Nextel brand, which is recognized by customers as the premium wireless brand across our markets. We believe that the ongoing evolution of our business driven by the launch of our 3G networks and exemplified by our new brand identity will position us to continue to deliver differentiated products and services and the best experience to a broader range of high value customers.

CFO Hemmady stated in part:

Our focus on the operating metrics of our business enabled us to generate solid results during the period, with a 19 percent increase in our ending subscriber base and a 21 percent increase in revenues over the same period last year. Our results for the period were affected by depreciating local currency values relative to the dollar late in the quarter, at a time when we also incurred an increase in operating expenses relating to the deployment of our 3G networks and a more intense competitive environment in Brazil. While we expect these conditions and lower currency exchange rates to continue to impact our results for the remainder of the year, we will remain focused on delivering against our operating and financial metrics as we move forward with the deployment of our 3G networks and the related evolution of our business.

177. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

Looking across our results, I think it is fair to say that our performance this quarter reflects a number of encouraging developments, tempered by the impact of some new challenges related to the economic and competitive landscape. On the positive side, subscriber growth showed significant improvement over last quarter, particularly in Mexico, and we launched our new Push-to-Talk service on our 3G network in Peru, as well as our new brand image.

However, we saw the re-emerg[ence] of a weaker economic environment, and more aggressive competition in Brazil. Certainly these conditions pose challenges for us, but I'm confident that our team will manage through them as we have in the past by

concentrating on the core fundamentals that drive both growth and profitability.

Later, as part of the question-and-answer session, CFO Hemmady participated in the following exchange:

[Analyst]: If I could just press again on Brazil and the competition, because I think the rates of year-over-year increase in CPG is obviously faster than we have ever seen before, and as you say, some of it is down to brand. But, if you could just talk a little bit in more specific detail about what has happened during the quarter from which of your competitors you have seen that competition coming from.

CFO Hemmady: We have seen primarily the promotional activity that we have seen is from, without naming names, is really from some of the number 1, number 2 market share pullers as you can imagine. So that is something that we have seen more in the second half of the quarter, as we pointed out. And I think Steve said in some of his comments, *there is nothing unusual about the promotional activity that we have seen*. As we have said, it is a highly competitive marketplace. We have seen some more intense promotional activity, and we have done some of that ourselves and our investments in CPG has gone up as a result of that.

178. Prior to the markets' open on November 8, 2011, NII filed its quarterly report on Form 10-Q for the quarter ended September 30, 2011, which included the same financial results previously reported in the Company's October 27, 2011 press release, as well as setting forth the following figures as part of the Company's consolidated statements of operations:

Service and other revenues	\$ 1,667,262
Cost of service	462,463
Selling, general and administrative	682,002
Depreciation	158,879
Interest expense, net	(93,545)

As part of the Company's consolidated balance sheet, the Company's November 8, 2011 Form 10-Q set forth the following figures:

Property, plant and equipment, net	3,103,515
Long-term debt	3,220,103
Retained earnings	2,223,490

However, the improper classification of leases and improper capitalization of construction in progress, among other errors, rendered these figures false and misleading, and such misstatements supported, contributed to and reinforced the artificially positive image of NII and the progress and development of NII's new network put forth by Defendants. The Company's November 8, 2011 Form 10-Q also included certifications substantially similar to those described in paragraph 145.

179. After the markets closed on November 9, 2011, NII filed a Form 8-K disclosing that earlier that day Defendant Gendron had notified the Company of her decision to resign effective November 23, 2011. The Company reported that Defendant Freiman, the Company's Vice President and Treasurer, would assume the role of Controller and serve as the Company's Principal Accounting Officer.

180. On December 5, 2011, NII and NII Capital substantially concurrently filed the December Registration Statement on Form S-3 with the SEC in connection with the December Offering of the Notes. The December Registration Statement incorporated by reference, among other documents, the Company's annual report on Form 10-K for the year ended December 31, 2010, and quarterly reports on Form 10-Q for the quarters ended March 31, 2011, June 30, 2011, and September 30, 2011. The December Registration Statement was signed by, among others, Defendants Dussek, Hemmady, and Freiman. That same day, NII issued a press release announcing the December Offering of the Notes.

181. On December 6, 2011, NII issued a press release announcing the pricing of the December Offering of the Notes. That same day, NII and NII Capital substantially concurrently filed the December Prospectus with the SEC on Form 424(B)(5).

182. Prior to the markets' open on February 23, 2012, NII issued a press release announcing its financial results for the quarter and full year ended December 31, 2011. For the full year, the Company reported net subscriber additions of 1.68 million and lower-than-projected consolidated operating revenues of \$6.7 billion. The Company also offered guidance for 2012, including: (1) net subscriber additions of approximately 1.4 million; and (2) consolidated operating revenues of approximately \$7.1 billion. In connection with these results, CEO Dussek stated in part:

In 2011, we made significant progress on our business and 3G deployment plans and have achieved a number of key milestones in our business *including the launch of high performance push-to-talk on our new W-CDMA network in Peru*. . . . We believe that these investments will prepare our business for the future and will help us create value as we target additional customer segments and provide innovative broadband wireless services to our high value customer base.

* * *

We are making good progress on our 3G deployment plans and we have set very aggressive goals in each of our markets to build these new networks to deliver the highest quality experience to our customers. Although progress has been made, we have experienced some construction related delays that have caused us to adjust the timing of when we will make these services available. I want to be clear that *these changes in our schedule are related to non-technical areas such as the pace of site acquisition, and not to any problems with the technology*.

Taking this into consideration, our current thoughts on when we will begin to offer services on our new networks are as follows. In Chile, we believe we will be in a position to make 3G voice and data services available in mid-2012. In Mexico and Brazil, our plan is to begin offering services on our new networks in the second half of the year. 3G services are expected to be available on a wider commercial basis in some key markets in Mexico, late in the third quarter, and in Brazil by the end of the year.

CFO Hemmady stated in part:

Our team delivered solid operational results in 2011, generating good growth in our business even in the face of a more volatile economic environment, more intense competition and weakening local currency exchange rates late in the year. We expect to continue to face intense competition in 2012, but we will not let these challenges distract us from our commitment to serving our high value customers. While we are all focused on our goal of offering services on our new W-CDMA networks in our most important markets over the course of 2012, ***we will only launch these services when we are comfortable that the networks will provide the highest quality service and superior experience that our customers have come to expect.***

Additionally, the press release set forth the following figures (in millions of dollars) as part of the Company's consolidated statements of operations for the three months ended December 31, 2011:

Service and other revenues	\$ 1,519.3
Cost of service	430.0
Selling, general and administrative	676.2
Depreciation	150.9
Interest expense	(52.0)

183. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

We made significant progress toward our deployment of our 3G networks and supporting systems. And we launched our new brand image and expanded our distribution channels to reach a wider range of customers. And we did all this while continuing to drive profitable growth and build one of the most valuable customer bases in the industry. While we have many accomplishments that we are proud of we recognize again that we have much work to do in 2012.

To reiterate our priorities for 2012—we will make 3G services available in Chile, Mexico and Brazil. ***We will implement the solutions to improve the performance of our new Push-to-Talk Services and we'll launch those services more broadly across our distribution channels in Peru and in our other markets when we begin offering services on our new 3G networks.***

Later, as part of the question-and-answer session, CEO Dussek and CFO Hemmady participated in the following exchange:

[Analyst]: Just was wondering if you could dive in a little bit deeper in terms of how you see the year playing out particularly in markets like Mexico and Brazil and how we should think about the downward trajectory of your net add figure kind of year over year?

And then secondly, kind of an ancillary question to that. At your Analyst Day last May in Peru, [you] kind of gave figures suggesting something in the 22 million subscriber total number by the end of 2015. That would imply obviously some significant growth in net adds in the 2013 to 2015 time frame, kind of well over a 3 million a year kind of net add pace. Just was wondering if you remain comfortable with those levels in terms of how you see the long range business plan of the Company playing out over the next couple years?

CEO Dussek: . . . I think it's safe to say *we're taking this Company to new heights and that this is the year, a true year of beginning of that transformation for us*. And I really want to stress that backdrop as—before we start to give you the detail and our logic. . . .

CFO Hemmady: . . . *We believe that we have discontinued some of the plans that resulted in those declines in ARPU so we'll see a more relatively stable ARPU going forward*. But as we think about 2012 and that competitive environment in Brazil, we are going to get very focused on managing the right balance between growth ARPU our cost margins and return on capital. So what does that really mean? First, gross adds in 2012 are going to be relatively flat compared to '11. So from 2010 to '11 we grew our gross adds by 15%. We are saying from '11 to '12 in advance of building of our 3G networks we are going to remain flat in gross adds. So we are not going to—like in past years necessarily increase our gross adds in advance of the 3G networks being deployed as well as a change in the competitive environment. When I say a change in the competitive environment I mean some customer segments in the past may have been profitable given a certain level of pricing in the marketplace. But with what we are seeing today certain segments may not be as profitable and so we are going to be very careful about spending retention dollars on those kinds of unprofitable segments. And so as a result as we go into 2012, we'll grow Brazil in kind of the low-to-mid teens.

184. That same day, after the markets closed, NII filed its Annual Report on Form 10-K for 2011, which included the same financial results previously reported in the Company's February 23, 2012 press release, as well as setting forth the following figures as part of the Company's consolidated statements of operations for the year ended December 31, 2011:

Service and other revenues	\$ 6,403,154
Cost of service	1,786,066
Selling, general and administrative	2,511,857
Depreciation	618,412
Interest expense, net	(322,501)

As part of the Company's consolidated balance sheet, the Company's February 23, 2012 Form 10-K set forth the following figures for the quarter and year ended December 31, 2011:

Property, plant and equipment, net	3,490,474
Long-term debt	4,253,171
Retained earnings	2,214,754

However, the improper classification of leases and improper capitalization of construction in progress, among other errors, rendered these figures false and misleading, and such misstatements supported, contributed to and reinforced the artificially positive image of NII and the progress and development of NII's new network put forth by Defendants. The Company's February 23, 2012 Form 10-K also included certifications substantially similar to those described in paragraph 145.

185. On March 1, 2012, NII announced that Defendant Freiman would step down from his role as Controller for the Company effective April 2, 2012, and that Defendant Neff would assume the role of Vice President, Finance Operations and Controller of the Company effective April 2, 2012.

186. On April 25, 2012, NII announced the launch in Peru of the first PTT Android™ smartphone, dubbed the U8820, on its new 3G platform. The Company touted this development and its ability to meet customer needs:

“We are excited about offering our first 3G smartphone with Push-to-Talk capabilities in Peru,” said Greg Santoro, executive vice president, chief marketing and strategy officer at NII Holdings. “As we deploy our next-generation networks across our markets, ***we continue our commitment to delivering differentiated high quality wireless products and services that meet the needs of our growing customer base,***” he added.

The U8820 adds to Nextel Peru’s cutting-edge handset portfolio by being the first smartphone equipped with the power of Nextel’s high performance PTT service, a high speed Internet connection, and the option to hold group direct connect calls, making it an ideal business tool.

“As Peruvian wireless customers’ preference continues to shift toward the most advanced handheld devices and services available on the market, ***we feel confident that our new handset portfolio and enhanced services will meet the growing demand in Peru,***” said Mariano Orihuela, vice president of marketing of Nextel Peru. “The U8820 represents our best features in one product that will enrich our customers’ productivity and efficiency.”

187. Prior to the markets’ open on April 26, 2012, NII issued a press release announcing its financial results for the quarter ended March 31, 2012. The Company reported net subscriber additions of 260,000 and consolidated operating revenues of \$1.63 billion. In connection with these results, CEO Dussek stated in part:

Our consolidated operating results for the first quarter reflect our progress on our key priorities that support our long-range business goals and the challenges we are facing in some of our markets. We are striving to generate the best balance of growth and profitability as we invest for our future. During the quarter, ***we made progress toward launching our planned 3G networks and investing in our distribution channels and support systems.*** We also completed enhancements to our 3G PTT service, and we are ready to move forward with the broader launch of 3G services in Peru beginning in May.

CFO Hemmady stated in part:

2012 is a transformational year for our business, and we are taking a balanced approach in our pursuit of profitable growth during this transitional period. Our results for the period were affected by a number of factors including an increase in operating expenses

relating to the deployment of our 3G networks and pricing pressures driven by a challenging competitive environment in Brazil. While we expect that these conditions will continue to impact our financial results for the remainder of the year, we are committed to implementing strategies designed to improve our operating performance and that enable us to reach our goals. *We remain confident that the investments we are making in our business and our new networks will create value over the long-term by positioning NII to pursue a much broader group of customers and to serve those customers more profitably with a wider range of products and services.*

188. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

[The] focus on meeting our customers' needs is, and will always be, at the heart of what we do. But this year isn't only about the strategic priorities we've been discussing. We also must remain focused on generating operational results in our existing business in a very competitive environment. While we are feeling the effects of this environment in our results today, *we are taking action to remain competitive during our transition period. And we are investing to improve our capabilities and tool set in order to significantly improve our competitiveness for tomorrow.*

And we remain very encouraged about what our [b]usiness will deliver in the long run. As you heard us say in our last call and since, we believe that 2012 will be a transformative year for NII, as we deploy our 3G networks, expand our brand and retail presence and bring exciting new products and services to the market. *We are investing in our [b]usiness today to create growth, profitability and scale in the future.* And our entire team at NII is working to ensure that we execute on our vision and deliver value for the long term.

Later, as part of the question-and-answer session, CEO Dussek participated in the following exchange:

[Analyst]: [W]here is your comfort level with respect to your current net add guidance for the full year of 1.4 million?

CEO Dussek: . . . In terms of our outlook for the year—relative to the second part of your question, what we talked about in the comments we made in the script that we have our upcoming launches for 3G in Peru [w]hich obviously we're very excited

about given that we have fixed the quality issues on the voice quality on the network side. So we are very excited about that launch in early May. Then Chile is on track to launch in mid-year as planned. And our launch of Mexico is on track to launch by the end of third quarter. And we fully expect that that will give us a lot of momentum heading into the balance of the year. . . .

189. Following the close of the markets on May 8, 2012, NII filed its quarterly report on Form 10-Q for the quarter ended March 31, 2012, which included the same financial results previously reported in the Company's April 26, 2012 press release, as well as setting forth the following figures as part of the Company's consolidated statements of operations:

Service and other revenues	\$ 1,546,100
Cost of service	436,975
Depreciation	160,312
Interest expense, net	(96,822)

As part of the Company's consolidated balance sheet, the Company's May 9, 2012 Form 10-Q set forth the following figure:

Retained earnings	2,225,612
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However, the improper classification of leases, among other errors, rendered these figures false and misleading, and such misstatements supported, contributed to and reinforced the artificially positive image of NII and the progress and development of NII's new network put forth by Defendants. The Company's Form 10-Q for the quarter ended March 31, 2013 also included certifications substantially similar to those described in paragraph 145.

190. On June 15, 2012, the Company filed a Form 8-K with the SEC reporting that Defendant Hemmady was appointed to serve in the newly created position of COO, and would continue in his role as CFO until the Company named his successor.

3. The Truth Begins to Emerge

191. Before the markets opened on August 7, 2012, NII issued a press release announcing financial results for the quarter ended June 30, 2012 that badly missed analyst

consensus estimates. The Company reported net subscriber additions of 235,000 and consolidated operating revenues of \$1.5 billion. NII also reduced guidance on every front for full year 2012 to levels well below analysts' expectations, including: (1) a decrease in net subscriber additions from 1.4 million to 1.0 million; and (2) a decrease of consolidated operating revenue from \$7.1 billion to \$6.1 billion. In connection with these results, CEO Dussek stated in part:

During the second quarter, we continued to move forward with the deployment of our 3G networks, while addressing a number of near-term operational challenges we face in some of our markets. In May, we successfully launched a full complement of 3G services in Peru including our high performance push-to-talk solution, loading over 44,000 subscribers on our new network in less than two months, and in July, we started offering services on our 3G network in Chile. *While we are pleased with this progress, we recognize that much work remains to be done to improve our results as we respond to changes in the competitive environment and prepare our business for the transition to 3G. We are taking actions designed to drive that improvement and place NII in the best position possible as we launch 3G services in Mexico at the end of the third quarter and Brazil at year end.*

COO Hemmady stated in part:

This is a pivotal year for our business as we launch 3G services and focus on improving our operations as we head into our next growth phase. *We have implemented strategies that are designed to better align our customer base with the value proposition we offer and improve our performance in the second half of the year.* Although we have adjusted our outlook for the year based on the current environment, *we remain very excited about the progress we are making on our 3G expansion plans and the opportunity 3G creates for growth in the future.* We believe the investments that we are making now will enhance our competitive position and create value over the long term by enabling us to pursue a broader range of customers with additional products and services while improving our overall profitability.

192. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

We are achieving important milestones in our 3G strategy. We have seen good early traction on the launch of our 3G voice

products in Peru. We have started offering 3G services in Chile and are on track to offer 3G services in Mexico in the third quarter and in Brazil by year-end. While we are not happy with our current results, we are still expecting to grow our subscriber base by 10% during our transition and we look forward to our upcoming 3G launches and using our enhanced competitive position to pursue more profitable growth in the years to come.

Later, as part of the question-and-answer session, CEO Dussek participated in the following exchange:

[Analyst]: [O]n the 3G, as you are launching 3G, you had mentioned in Chile you launched it on a roaming basis initially in May. That obviously would not have Push-to-Talk in the product that you would have launched in May. Now in July you have Push-to-Talk as well as 3G. So as we think about the next set of market launches Mexico in September and Brazil at year-end, is that a 3G launch? Is that 3G with Push-to-Talk launch? And how important is the Push-to-Talk offering that in the 3G that you're seeing in Peru?

COO Hemmady: *The Push-to-Talk offering in 3G is extremely important. It is our value proposition. We believe that we're getting the traction we've gotten in Peru in the first two months with our Push-to-Talk offering.* We had that capability in Chile to launch on a roaming basis. We did it to kind of enter the marketplace. Now, we've aggressively launched it with Push-to-Talk, and you will see much greater traction on our gross adds for the balance of the year. As far as Mexico and Brazil go, both those launches will be 3G with Push-to-Talk. That is absolutely our expectation and that's how we are going to launch [in] Mexico by the end of September and Brazil by the by the end of the year. And one last thing, Ric we launched 3G with handsets in Chile with the buttons, so it's not as if we have to swap out handsets. We have given handsets to our subscriber base. They did it on a roaming capability. Now they have the ability to use the Push-to-Talk capability.

193. Prior to the markets' open on August 7, 2012, NII also filed its quarterly report on Form 10-Q for the quarter ended June 30, 2012. This report set forth financial results reported in a press release by the Company later that same day. The Form 10-Q also included certifications substantially similar to those described in paragraph 145.

194. Analysts expressed surprise about these results. For example, a Deutsche Bank analyst downgraded the Company's stock, commenting that: "While we had expected adoption of 3G technology to be painful, *it appears much worse than we expected*. Additionally, the guidance for the rest of the year is *well below our worst-case scenario*." Rizwan Ali, *2Q Results & 2012 Guidance Below Expected. Downgrading to Hold*, Deutsche Bank Markets Research, Aug. 7, 2012. Another analyst called the results "*dismal*" and declared that "While we were expecting a reduction in full-year guidance, *the cuts were more extreme than we would've guessed*." Imari Love, *NII's Share Price Set to Fall Along With Its Guidance*, Morningstar, Aug. 7, 2012.

195. In addition to the disappointing results and outlook contained in this report, in the Form 10-Q, NII disclosed that certain financial statements filed with the SEC (and incorporated by reference into the Company's Offering Documents) contained numerous errors:

In connection with the preparation of our condensed consolidated financial statements for the three months ended June 30, 2012, *we determined that certain previously issued financial statements contained errors*. We have evaluated these errors under the SEC's authoritative guidance on materiality (Staff Accounting Bulletin No. 99) and the quantification of the effect of prior period misstatements on financial statements (Staff Accounting Bulletin No. 108), and we have determined that the impact of these errors, individually and in the aggregate, on prior period consolidated financial statements is immaterial. Even though these errors were, and continue to be, immaterial to the prior period financial statements, *the SEC's guidance requires that prior period financial statements be corrected since the correction of the cumulative impact of these errors in the second quarter of 2012 would have been material to our results of operations for the three months ended June 30, 2012 and are currently expected to be material to our projected results of operations for the year ended December 31, 2012*. Accordingly, we have revised our prior period financial statements as described below to correct these errors and other immaterial out-of-period adjustments made in prior periods. There was no impact to our actual cash balances as a result of these adjustments, and these adjustments do not

change net cash flows from financing activities. The impact of these adjustments on net cash flows from operating and investing activities was inconsequential.

The following is a description of the areas in which these immaterial errors were identified and for which we made correcting adjustments to the prior period consolidated financial statements:

(1) *Value Added Taxes (VAT)* – We identified and corrected various immaterial errors in ***the recognition of value added tax expenses in Brazil reflecting both under accrual and over accrual of expenses depending on the period and transaction type***;

(2) *Construction in Progress* – We identified and corrected immaterial errors related to ***the incorrect capitalization of certain expenses incurred on internally developed software projects***. The correction of these adjustments resulted in a reduction to property, plant and equipment and an increase in general and administrative expenses, as well as the adjustments to net cash flows from operating and investing activities mentioned above;

(3) *Income Taxes* – We identified and corrected immaterial errors in the calculation of income tax expense and applicable tax liabilities reflected in the prior period tax provision calculations, as well as the related income tax expense and liability effects of the pre-tax adjustments described here. We also identified and corrected a balance sheet misclassification between current and noncurrent deferred income taxes;

(4) *Leases* – We identified and corrected immaterial errors related to the ***misclassification of certain transmitter and receiver site co-location leases that were incorrectly classified as operating leases rather than capital leases***; and

(5) *Other* – We identified and corrected other immaterial errors that are not applicable to the above categories.

196. In response to this partial disclosure of the effects that the Company's failing efforts to transition away from iDEN-based technology were having on its financial results and that the Company's reported financial statements for prior periods were inaccurate, NII's stock price fell \$1.97 per share, or 24.38 percent, to close at \$6.11 per share on August 7, 2012.

However, the price of the Company's securities remained inflated because Defendants:

(1) offered false and misleading statements relating to NII's progress in its deployment of new systems; (2) falsely mischaracterized the inaccuracies in the Company's prior financial statements relating to value-added taxes, income taxes, construction in progress, and capital and operating leases as immaterial, and improperly concealed the fact that investors should not rely on those financial statements; (3) reported falsely inflated values for the Company's deferred tax assets; and (4) continued to offer characterizations of the Company's outlook that had no rational basis.

197. On September 26, 2012, NII announced the launch in Mexico of its 3G network, which would initially provide PTT services to 34 cities. The Company described this development as follows:

The new network provides *a robust technological platform that offers a full array of wireless products and services*, including a differentiated Push-to-Talk (PTT) service and high-speed data capabilities, incorporated into Android-based smartphones.

"We are extremely excited about the launch of our next generation network in Mexico and providing our customers with innovative and differentiated solutions, including our high performance Push-to-Talk and broadband data services," said Greg Santoro, NII's executive vice president and chief marketing and strategy officer. "The deployment of this new network further solidifies our positioning in one of our most important markets, while *strengthening our commitment to delivering high quality wireless products and services with unparalleled customer service.*"

The new high performance PTT services are tightly integrated with the mobile broadband data services available on the network and deliver an instant PTT experience that meets the expectations of Nextel Mexico's customers for best-in-class instant communications. In this first phase of the deployment, the next generation offerings will be available in 34 cities in the country, including Mexico City, Guadalajara, Monterrey, Puebla and Cancun. A second phase expansion expected to cover all of the main cities in Mexico is scheduled to launch in 2013.

“The launch of our next generation network along with the new high performance PTT experience in Mexico is both an exciting and highly anticipated milestone for our employees and our customers,” said Peter Foyo, president of Nextel Mexico. ***“Our customers have come to expect quality and cutting-edge services from us, and we are proud to provide these enhanced offerings, which will allow us to provide more options and benefits for our customers.”***

198. Analysts considered NII’s positive claims of the coverage offered by its new network in Mexico and the Company’s ability to deploy this system on schedule to be important elements of the Company’s transition to its new 3G network. For example, an analyst from Wells Fargo Securities noted:

This morning NIHD announce[d] the official launch of 3G in 34 Mexican markets. This represents Phase I of this important market (Phase II will take place in 2013). . . .

While expected, ***we view the achievement of this timeline as a positive for the shares given the moving target such deadlines have been in the past for the company.*** . . .

BOTTOM LINE: ***We continue to believe the worst is behind NIHD.*** While we still need evidence of further execution, we believe the company is gaining its stride a bit now that 3 of its 4 3G launches are . . . behind it.

Jennifer M. Fritzsche, *NIHD: Hitting Its Deadline In Mexico—Although Baby Steps . . . Moving In Right Direction*, Wells Fargo Sec., Sept. 26, 2012.

199. On October 4, 2012, NII filed a Form 8-K with the SEC reporting that Defendant Hemmady would voluntarily resign from his role as CFO effective October 17, 2012, but continue in his role as COO. Further, Defendant Figuereo would assume the role of CFO effective October 17, 2012.

200. After the market closed on October 31, 2012, the Company filed a Form 8-K with the SEC disclosing that, after discussions with the SEC regarding the Company’s assessment of the materiality of the errors identified in its August 7, 2012 Form 10-Q:

[M]anagement and the Audit Committee of our Board of Directors, in consultation with our independent registered public accounting firm, concluded on October 29, 2012 that the audited financial statements included in our Form 10-K for the year ended December 31, 2011 and the unaudited financial statements included in our Form 10-Q for the quarter ended March 31, 2012 ***should no longer be relied upon by investors***

and that the Company would restate its financial statements for the fiscal years ended December 31, 2011, 2010, and 2009.

201. Analysts noted that the import of NII's restatement went beyond the simple adjustment of financial figures, reflecting negatively on management's prior discussions of the Company's progress in developing and deploying its new network. For example, an analyst from Scotiabank noted:

We think that this is a bad time to tell investors that its accounting is not to be trusted as NIHD's credibility suffered heavily after the 3G delays and the slash to 2012 guidance.

Andreas Coello, *Tiny Accounting Mistakes . . . At a Bad Moment!*, Scotiabank, Oct. 31, 2012.

202. On November 6, 2012, NII published a press release heralding a strategy to realign resources between its headquarters and marketing units in order to support future growth in Latin America and foster "a stronger and more agile organization." In addition to revealing that it expected to incur one-time costs in the fourth quarter of approximately \$8 million related to a 20 percent headcount reduction at its corporate headquarters, CEO Dussek explained the rationale behind the new strategy:

These actions will provide us with the right structure to capture the growth, scale, and accountability required to succeed in our markets and achieve our long-term growth objectives. By realigning our workforce, we will have a stronger foundation to execute our growth strategy which is focused on premium networks, a superior customer experience, and innovative products and services. The steps we are taking fortify our ability to leverage our high-quality services and technology in order to

capture a larger share of the growing market for wireless communications in Latin America.

203. Prior to the markets' open on November 7, 2012, NII issued a press release announcing its financial results for the quarter ended September 30, 2012. The Company reported net subscriber additions of 152,000 and consolidated operating revenues of \$1.49 billion. In connection with these results, CEO Dussek stated in part:

During the third quarter, we made progress on the deployment of our 3G networks, but were disappointed with our operating results. Nextel Brazil's performance continued to be adversely impacted by the actions we are taking to improve the quality of our customer base. While these actions have driven an increase in churn, they are also leading to more stable ARPU and higher quality subscriber loading. Moving forward, in the fourth quarter of this year, we have decided to execute a strategy in Brazil to eliminate customers on our network who do not align with our value proposition and have proven to be expensive and difficult to retain. While this plan will mean that churn will rise substantially for the fourth quarter of 2012, causing us to fall well below our consolidated net addition goals for the year, it will position Nextel Brazil to return to positive net add growth in the first quarter of 2013, with a higher quality subscriber base. ***Executing this strategy is the right decision for the business in the long-term.***

A key component of our long-term strategy is the deployment of our 3G networks, which will enable us to expand and improve our competitive service offering. ***We have reached several milestones in this effort, including our recent launch of the initial phase of our 3G network in Mexico, and our launch of 3G services in Chile and Peru. We are experiencing good demand for our 3G services adding 3G voice and data customers in each of our markets where our new networks have been launched, and we are encouraged about the growth we expect to generate on these networks in the future.*** However, we continue to experience problems executing on our 3G deployment in Brazil, and we are behind schedule. Our team is working hard to get our new services up and running as soon as possible. We expect to launch our first wave of 3G services supported by this new network in select cities in Brazil later this year, initially focusing on data services and adding new services and features more broadly in 2013.

204. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Dussek stated in part:

In Chile, the launch of 3G services continues to be well received resulting in 45,000 gross adds for the third quarter. And in Mexico, we just launched the first phase of our 3G network covering Mexico City and related areas. While it has only been a few weeks since the launch, feedback from our customers has been positive. We have used the experience we gained in our Peru 3G deployment to ensure that our new 3G network in Mexico delivers high-quality services and an excellent experience for our customers.

We have an improved device portfolio, and we are offering a full range of services including our high performance Push-to-Talk service at launch. We expect these efforts to have a modest positive impact on our subscriber results beginning in the fourth quarter, but we expect that this and future phases of our 3G deployment will position Nextel Mexico for stronger long term growth.

Later, as part of the question-and-answer session, COO Hemmady participated in the following exchange:

[Analyst]: On Mexico it seemed like the deterioration in ARPU on a constant currency basis accelerated from last quarter. How can you explain that?

COO Hemmady: I think it has been slightly more deterioration, you're right, as we have seen—as compared to a trend in the past. And I would say that in Mexico in general, it's becoming a market with high subsidy on the smartphones with some lower rate plan pricing in some of the segments that we are seeing. So we are also seeing that in our rate plans that we've had to modify some of our rate plans. *But as we roll out 3G, like what we've seen in Peru, we are going to price our offering there at a premium and we expect to get that premium.* We also are going to go aggressively after share of [bids]. So for example, about 20% to 30% of our base there today has only direct connect rate plans. and they are absolutely using a second phone from one of our competitors. And with that 3G offering, we plan to go after that aggressively, and therefore improve ARPUs in Mexico.

205. Before the markets opened on November 8, 2012, NII filed its quarterly report on Form 10-Q for the quarter ended September 30, 2012, which included the same financial results previously reported in the Company's November 7, 2012 press release. The Form 10-Q also included certifications substantially similar to those described in paragraph 145.

206. On November 19, 2012, prior to the markets' open, NII filed the following documents in connection with the restatement of its financial statements:

- (a) Form 10-K/A to amend and restate the Company's annual report on Form 10-K of for the years ended December 31, 2011, 2010, and 2009;
- (b) Form 10-Q/A to amend and restate the Company's quarterly report on Form 10-Q for the quarter ended March 31, 2012; and
- (c) Form 10-Q/A to amend and restate the Company's quarterly report on Form 10-Q for the quarter ended June 30, 2012.

Also, on November 19, 2012, the Company filed a Form 8-K announcing that Defendant Hemmady would replace Sergio Borges Chaia as the President of Nextel Brazil.

207. On December 13, 2012, the Company issued a press release announcing that Defendant Shindler had been appointed interim CEO and that Defendant Dussek had stepped down from his position as CEO and from his membership on the board. These changes were effective immediately.

208. Before the markets opened on February 5, 2013, the Company issued a press release providing preliminary results for the quarter and full year ended December 31, 2012. The Company disclosed that it expected to report approximately 650,000 net subscriber additions for 2012, and full-year consolidated operating revenues of \$6.1 billion. The Company also provided disappointing guidance for 2013, including: (1) "Mid-single digit growth rate for consolidated subscriber base;" and (2) consolidated revenues in the range of \$5.7 to \$5.9 billion. In connection with this preliminary report, CEO Shindler stated:

While 2012 was a pivotal year for NII as we made progress in the deployment of our 3G networks and new service offerings, we fell well short of expectations. ***We intend to get back to delivering results in 2013 that meet expectations through solid execution and have already taken steps to streamline our business operations both at our headquarters and in our markets consistent with that goal. We are confident the investments we are making now will enhance our competitive position and create value over the long-term.*** We recognize the industry challenges facing our business today, and we are taking steps to fortify the Company's operations to generate long-term growth and profitability.

We are taking an aggressive approach to complete our 3G network deployments, streamline our vendor relationships, improve our cost structure, and prioritize investments in our core markets. While we expect the increase in our 3G related operating expenses to result in a decline in our adjusted OIBDA for 2013 as we deploy our new networks, we believe that these investments are critical as we position the Company to be competitive for the long-term and to drive profitable growth in the future.

209. In response to this partial disclosure of the effects that the Company's failing efforts to transition away from iDEN-based technology were having on its financial results, NII's stock price fell \$0.55 per share, or 8.62 percent, to close at \$5.83 per share on that day. Additionally, the market price of the Notes declined by 9.39 percent to close at \$700 per Note that day.

210. However, the prices of the Company's securities remained artificially inflated because Defendants: (1) continued to offer false and misleading statements relating to NII's progress in its deployment of new systems; (2) reported financial results based in part on falsely inflated values for the Company's deferred tax assets; and (3) offered characterizations of the Company's outlook that had no rational basis.

211. Prior to the markets' open on February 28, 2013, NII issued a press release announcing its final financial results for the quarter and full year ended December 31, 2012. The Company reported: (1) net subscriber additions of 2,000 for the quarter and 650,000 for the full

year; and (2) consolidated operating revenues of \$1.5 billion for the quarter and \$6.1 billion for the full year. In connection with these results, CEO Shindler stated in part:

While we achieved a number of important milestones in 2012, our financial results for the year did not meet expectations. In 2013, we intend to improve on our execution *while we complete our investments in key initiatives that will enable us to drive long-term value and more profitable growth in the future.* These key initiatives include the deployment of our new 3G networks in Sao Paulo and Rio de Janeiro and the expansion of our coverage footprint in Mexico.

Substantially concurrently, NII filed its Annual Report on Form 10-K for 2012, which included the same results as those reported in the Company's press release that day. The Form 10-K also included certifications substantially similar to those described in paragraph 145.

212. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, COO Hemmady stated in part:

I should note that our expectations for subscriber growth in Mexico for 2013 reflect the impact of Sprint's decommissioning of its iDEN network we expect this to *temporarily drive higher iDEN churn* especially in our border markets and a reduction in roaming revenues and international direct connect traffic as Sprint transitions its remaining iDEN customers to its CDMA network.

Later, as part of the question-and-answer session, COO Hemmady participated in the following exchange:

[Analyst]: I just wanted to follow-up on your comments about the impact of the Sprint decommissioning, is this something that only started to impact you in the fourth quarter, because I think it's the first time that we hear you talk about it. So, I was wondering to what extent there might have been an impact in previous quarters and whether or not this is a bit of a surprise for you?

COO Hemmady: On the Sprint decommissioning we are expecting an impact, as we said in our remarks, on 2013; and that is included in our outlook for 2013. So *it is not a surprise for us.* We are starting to see—we started to see some of that in our churn.

So the impact is really less roaming revenues from Sprint customers roaming into Mexico, less international direct connect traffic and therefore, lower revenues there. Then in 2013 we probably expect to see lower growth and higher churn along the border. So that is the impact. We are starting to see some of it in our fourth quarter. We probably will see more as we move along this year.

213. Prior to the markets' open on May 2, 2013, NII issued a press release announcing its financial results for the quarter ended March 31, 2013. The Company reported net subscriber additions of 152,000 and consolidated operating revenues of \$1.41 billion. In connection with these results, CEO Shindler stated in part:

During the quarter, we took actions to execute against our key priorities, and *we are tracking well on our goals for the year*. We continue to focus on completing our next generation networks in Mexico and Brazil, improving our operational performance and realigning our business operations to provide the best return on investment. We have taken steps to achieve these goals, including adding more discipline to our processes and improving our focus on execution, which has positively impacted our network deployments and operational performance. Our recently announced sale of Nextel Peru to Entel is one step in this process to realign our business. *We are excited about the progress that we have made to date, and there is a lot more to come.*

Substantially concurrently, NII filed its Form 10-Q for the quarter ending March 31, 2013, which included the same results as those reported in the Company's press release that day. The Form 10-Q also included certifications substantially similar to those described in paragraph 145.

214. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Shindler stated in part:

[W]e are on track with our network deployment plans in both Brazil and Mexico, driven by the process changes and improvements that we have implemented.

* * *

In Mexico, we began to see increased demand for our new services as customers experience our superior network speeds and growing

coverage. However, this demand was somewhat offset by higher churn levels for our iDEN services as we continue to be impacted by Sprint's planned shutdown of its iDEN network in the U.S.

* * *

In Mexico, we expect to be in a position to push subscriber growth starting in the third quarter of this year. Similarly, in Brazil, we expect to be in a position to drive 3G subscriber growth beginning in early 2014. In the meantime, [we'll] take a very measured approach with moderate growth as our focus is on customer retention. As we make the transition to 3G services, we are also working to ensure that the handsets and devices we offer will meet the needs and preferences of our customers.

* * *

We are gaining traction on 3G subscriber growth in Mexico and *we are confident that the combination of our high-quality networks, our superior customer service, our high-performance Push-to-Talk service, instantly connecting our community of subscribers; our attractive new portfolio of handsets, and our high-speed data services, all will enable us to successfully capture a significant number of new profitable subscribers from our extending target market.*

Later, as part of the question-and-answer session, COO Hemmady participated in the following exchange:

[Analyst]: [A]bout gross add trends in Mexico, just was wondering, I know you guys talked about some of the dynamics there related to the Sprint shutdown of iDEN in some of your border markets. Just wondering how you see that trending throughout the remainder of the year as well, as you guys launch what appears to be a significant number of markets there going forward over the next six months?

COO Hemmady: On your question on Mexico, as you know, we did 45,000 gross adds this quarter on 3G. We expect that as we expand our coverage, we will begin to see even more momentum. Even in the first quarter, as I think about the month-to-month traction, I find that *it is increasing month-to-month*. As I think I said in my remarks, we are currently at about 5% of our base on 3G. And by year-end we expect that about 33% of our subscribers will be on 3G. So as you can see from that metric, we are forecasting that we continue to see some really good traction.

Now, included in that Chris, in addition to gross adds, we got good traction on migrations in the first quarter. ***Those migrations also on a month-to-month basis are increasing in a big way.***

215. On July 1, 2013, Nextel Mexico issued a press release titled *Nextel Mexico Continues To Keep Its Customers Connected With The U.S. Via Its Push-to-Talk (PTT) Solutions Using Its Next Generation Network*. Therein, Nextel Mexico assured investors that its operations and customers would not be negatively affected by Sprint's discontinuation of its U.S. iDEN network. The press release stated in relevant part:

Nextel de Mexico customers can continue to call to and from the United States through its next generation network that offers voice, data, Push-to-Talk (PTT) and SMS service. ***Sprint's decision to decommission its iDEN network on June 30 in the United States does not affect Nextel Mexico's services.***

Nextel Mexico currently provides mobile communication services through two technologies: its traditional iDEN system and its new Nextel next generation network, Evolution. Customers on Nextel Mexico's iDEN network can call to and receive calls using Push-to-Talk from people in Mexico, Brazil, Peru, Chile and Argentina and with Sprint customers in the U.S. that use the Direct Connect service on Sprint's CDMA network. Nextel Mexico's customers who want to communicate using Push-to-Talk with people in the U.S. can also do so by using devices on Nextel Mexico's Evolution network. In addition, people in the U.S. can download the PRIP™ application from the Google play store and continue to use Push-to-Talk with Nextel Mexico customers who use service supported by either the Evolution or iDEN networks.

* * *

"We continue to provide our customers with the best connection options through Evolution, our next generation network, and we are encourag[ing] all customers to switch to this new service to experience a fully integrated voice and data communication offering," said Cristina Ruiz de Velasco, vice president of communications and institutional relations for Nextel Mexico. "Sprint's decision to decommission its iDEN network in the United States will not affect our customers' ability to connect with friends, family and business colleagues in Mexico or NII Holdings' other markets. The combination of our new Evolution network and the PRIP service will provide our customers with new ways to

communicate with their contacts in the U.S. as Sprint makes this transition,” said Ruiz.

216. Prior to the markets’ open on August 1, 2013, NII issued a press release announcing its financial results for the quarter ended June 30, 2013. The Company reported net subscriber additions of 100,000 and consolidated operating revenues of \$1.26 billion. In connection with these results, CEO Shindler stated in part:

We’re making progress on a number of initiatives that are key to our goal of improving the fundamentals of our business; however, we continue to experience significant challenges, including the impact of Sprint’s shutdown of its iDEN network in the U.S. on our operations in Mexico,” said Steve Shindler, NII Holdings’ chief executive officer. “While we expect the situation in Mexico will continue to negatively impact our results in the second half of the year, we are working to address these challenges by completing and expanding the coverage of our next generation networks, as well as increasing our marketing efforts to enhance consumer awareness of the new products and services they support. *The rigor and discipline that we have added to our next generation network deployment process is enabling us to meet the timeline we set for building our new networks,* as evidenced by the recent launch of wireless broadband services in our Sao Paulo market that will enhance our competitive position in Brazil.

Substantially concurrently, NII filed its Form 10-Q for the quarter ending June 30, 2013, which included the same results as those reported in the Company’s press release that day. Included in the 10-Q was a note to the financial statements that revealed that the Company had overvalued its deferred tax assets:

During the second quarter of 2013, we established a \$99.9 million valuation allowance on the deferred tax assets of one of our Mexican subsidiaries. . . . In evaluating the need for a valuation allowance, we considered the following negative evidence: (1) a history of cumulative U.S. GAAP pre-tax book losses projected for the three-year period ending in 2013; (2) there are no tax planning strategies available that would allow Nextel Mexico to utilize all of these deferred tax assets; and (3) Nextel Mexico is expected to continue to generate negative pre-tax results for the foreseeable future. *The projection of future pre-tax losses substantially increased during the second quarter of 2013,*

resulting in us concluding that it is “more-likely-than-not” the deferred tax assets would not be realized. Therefore, we recorded a full valuation allowance with respect to the deferred tax assets of this Mexican subsidiary.

The Form 10-Q also included certifications substantially similar to those described in paragraph 145.

217. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Shindler stated in part:

Our business in Mexico is experiencing significant volatility, mainly in the border area as a result of Sprint’s shutdown of its iDEN network in the U.S. *Over the past few weeks, the impact on customer experience has been more significant than we expected. The elimination of roaming capabilities on the border resulting from the shutdown are causing increased churn in our iDEN business in Mexico offsetting our traction on 3G and causing weaker overall subscriber metrics.*

CFO Figuereo stated in part:

During the quarter, we recorded a \$100 million non-cash valuation allowance against the deferred tax assets of one of our Mexican subsidiaries. The valuation allowance was the result of a somewhat mechanical test we [perform] every quarter, which looks at the prior three years and does not allow us to consider future projection of positive book income.

Later, as part of the question-and-answer session, COO Hemmady and CFO Figuereo participated in the following exchange:

[Analyst]: If I may, just two quick other things. One is that there is a *big disconnect between your net adds this quarter and the data reported by Anatel.* So I don’t know if you can comment on that. And then your tax, your valuation allowance for the deferred taxes. If you were to exclude that, you would have had positive taxes in the quarter, is that right?

CFO Figuereo: That’s right. If we had excluded the \$100 million impact of the valuation allowance, we would have had a benefit.

COO Hemmady: Michel, on the Anatel data, *we don’t really have any comments on that.* We go through a process required by them

of reporting our numbers and we do that like all other incumbents in the marketplace. So, we don't really have any comments there.

218. In response to these revelations of the true value of the Company's deferred tax assets and partial disclosure of NII's true outlook for profitability, NII's stock price fell \$0.49 per share, or 6.81 percent, to close at \$6.71 per share on that day. However, the prices of the Company's securities remained inflated because Defendants: (1) continued to offer false and misleading statements relating to NII's progress in its deployment of new systems; and (2) offered characterizations of the Company's outlook that had no rational basis.

219. On September 3, 2013, NII filed a Form 8-K with the SEC disclosing that on August 27, 2013, Defendant Neff, Vice President, Finance Operations and Controller, notified the Company of his decision to resign effective September 10, 2013.

220. Prior to the markets' open on October 31, 2013, NII issued a press release announcing disappointing financial results for the quarter ended September 30, 2013. The Company reported a net subscriber loss of 178,000, driven by a loss of 247,100 subscribers in Mexico, and consolidated operating revenues of \$1.1 billion. In connection with these results, CEO Shindler stated in part:

While we have met all of our network build goals, we did not effectively address challenges in Mexico associated with the iDEN shutdown in the U.S. or prevent the deterioration of ARPU in Brazil. We're extremely disappointed with our results for the quarter. In order to return to the level of growth that has made us successful in the past, we recently began implementing a set of initiatives focused on recovering lost ground and enhancing our competitive position in our major markets that we call 'Project Accelerate'. These initiatives include launching aggressive marketing campaigns and high value pricing plans in our core markets beginning in the fourth quarter, investing to improve the breadth and depth of our coverage, and moving quickly to offer iconic smartphones, including the Samsung Galaxy S4, HTC One, Moto X and others. We are also modifying our company-wide compensation plans to focus the entire organization on generating stronger growth, and streamlining the organization to re-align our

resources and further reduce costs. In addition, we are excited to announce that we will deploy LTE in select cities in 2014, further enhancing our competitive position. These and other initiatives are designed to accelerate subscriber and revenue growth and put us on a path to delivering stronger operational results in 2014.

Additionally, CFO Figuereo stated in part:

We are taking significant steps to position the Company for future subscriber and revenue growth, realign our cost structure and improve our financial performance; however, given the results that we have reported year-to-date, we are not going to achieve the financial goals that we laid out at the beginning of the year. . . . ***With the completion of the Nextel Peru sale and the announced tower transaction, we have a solid liquidity position to fund our accelerated growth initiatives,*** which we believe offer the best opportunity to return to profitability and improve our long-term cash flow profile.

Although NII declined to update guidance for 2013, the Company disclosed that it expected consolidated adjusted OIBDA for 2013 to miss prior guidance by \$200 million or more.

221. Substantially concurrently, NII filed its Form 10-Q for the quarter ending September 30, 2013, which included the same results as those reported in the Company's press release that day. The Form 10-Q also included certifications substantially similar to those described in paragraph 145.

222. In connection with the earnings release, NII hosted a conference call to discuss its results with analysts and investors. As part of his prepared remarks, CEO Shindler stated in part:

Beginning earlier this year and intensifying in the third quarter, ***our business in Mexico experienced substantial disruption, due in part to the impact of Sprint's decision to shut down its iDEN network in the U.S. The impact was more significant than we originally anticipated, and our new network was not ready to support the level of 3G subscriber loading and the sizable increase in migrations of customers in the affected areas in a way that met our customer's expectations.***

Also, while we proactively communicated with our customers, ***we didn't clearly convey the temporary differences in quality and coverage they should expect on the new network, including the***

availability and quality of roaming service in the U.S. All of these factors combined to create a negative perception of our services in Mexico, particularly with customers accustomed to our high-quality coverage and cross-border services on our iDEN network, which has made it more difficult for us to attract and retain customers. ***This resulted in a substantial subscriber loss for Mexico*** in the third quarter and, despite the actions currently underway, we expect more subscriber losses in the fourth quarter.

CFO Figuereo stated in part:

Turning to our outlook for the remainder of 2013, given the operational and financial results that we have announced year to date and the continued weakness in local currency exchange rate, as well as the expected impact of Project Accelerate on our results in the fourth quarter, ***we're clearly not going to achieve the goals that we set at the beginning of the year.*** And because we're still working through the numbers on the various initiatives included in Project Accelerate, ***we're not able to provide specific guidance at this time.***

Later, as part of the question-and-answer session, CEO Shindler participated in the following exchange:

[Analyst]: First of all, just was wondering if you could give us a little bit more specificity on what gives you the confidence that the business will begin to materially turn around in 2014. As you can understand, ***equity investors are—certainly appear very, very skeptical of a material turnaround, certainly beginning as early as next year.***

CEO Shindler: I think what it comes down to is ***it's just taken us longer to get the network to the level of quality and coverage and comparative expectations from what our customers have—what they're accustomed to from us.*** So the main difference and why we're confident we can make the turn next year is that we've completed what we need to get done on the network. We spent every hour of this past quarter working towards getting to the quality levels of what our customers expect. We've been filling in coverage holes. ***We've been putting in the in-building coverage that we were missing at the start of the quarter.***

So we ran on—I wouldn't call it a skeleton network, but it was—there was—there were a lot of holes, and we were racing to combat the issue that we knew was coming against the border. We migrated a lot of customers over, and they were not pleased to

see the difference in quality and compared to what they had from us previously.

223. Analysts expressed skepticism about NII's prospects in the aftermath of these announcements. For example, a J.P. Morgan analyst characterized the results as reflecting "a steep deterioration," and commented that "Mexico is not recovering from Sprint's [iDEN] shutdown, as being able to communicate at low rates with US persons was a very attractive feature for [NII]'s Mexican subscribers, especially those living at the border areas." Andre Baggio, *Financials Deteriorate Further in 3Q13 in Both Brazil and Mexico; Guidance Dropped; Maintain UW – ALERT*, J.P. Morgan Latin American Equity Research, Oct. 31, 2013.

224. In response the disclosure that the Company's efforts to implement its new network had not been proceeding as well as had been described, forcing its customers to operate on a near-skeletal network and damaging the Company's ability to gain and retain customers, NII's stock price fell \$1.37 per share, or 28.54 percent, to close at \$3.43 per share on that day. Additionally, the market price of the Notes declined 10.94 percent to close at \$570 that day.

225. On December 9, 2013, NII issued a press release providing an update on the progress of the Company's Project Accelerate and other initiatives. The Company disclosed that it would reduce headquarters staff by more than 25 percent, eliminate more than 1,400 positions in its market operations, and launch "aggressive marketing campaigns in the Company's core markets." Commenting on the changes, CEO Shindler stated in part, "By realigning our business and refocusing our teams on our growth goals, we can further simplify and streamline operations, reduce costs and free up resources."

4. The Entire Truth Is Revealed

226. Prior to the markets' open on February 28, 2014, NII issued a press release announcing its final financial results for the quarter and full year ended December 31, 2013. The

Company reported: (1) net subscriber losses of 247,000 for the quarter—including a net loss of 390,000 subscribers in the Company’s key Mexico market—leading to a full-year net subscriber loss of 213,000; and (2) consolidated operating revenues of \$1.1 billion for the quarter and \$4.8 billion for the full year, results significantly worse than suggested in NII’s earnings warning on October 31, 2013.

227. Although NII traditionally provided guidance for the coming full year regarding net subscriber additions and consolidated revenues as part of its announcement of full-year results, in connection with this announcement the Company offered only the following statement:

Taking into consideration the Company’s strategy for 2014, which reflects making investments to accelerate growth while balancing its need to preserve cash, the Company is providing limited guidance for the year. For 2014, the Company expects to grow its subscriber base and to invest between \$600 million and \$700 million in capital expenditures. ***The Company is not providing guidance on operating revenues, adjusted OIBDA or net subscriber additions at this time. However, considering the significant investments required to accelerate growth and acquire subscribers in 2014, the Company expects its full year consolidated adjusted OIBDA to be negative.***

In connection with these results, CEO Shindler stated in part:

We are clearly disappointed with our operational performance in 2013, and we are taking actions to improve our business results, including the launch of Project Accelerate, a program designed to build the foundation for growth as we use our 3G networks to drive operational improvements in 2014. ***We are seeing early encouraging signs of growth in subscribers purchasing 3G services in Brazil, but have more work to turn around our business in Mexico as we continue to suffer customer losses in that market.*** We believe that as we enter 2014 with our best-in-class 3G networks, differentiated service, strong brand and improving portfolio of devices, we are in a much stronger position to compete effectively in our core markets.

Substantially concurrently, NII filed its Annual Report on Form 10-K for 2013, which included the same results as those reported in the Company's press release that day. The Form 10-K also included certifications substantially similar to those described in paragraph 145.

228. In response the disclosure that the Company faced "continuing challenges affecting the Company's operations in Mexico" and that NII's Project Accelerate, "a program designed to build the foundation for growth," had produced limited benefit since its inception, NII's stock price fell \$1.43 per share, or 55.43 percent, to close at \$1.15 per share on that day on extraordinary trading volume. Additionally, the market price of the Notes declined by 10.58 percent to close at \$375 per Note that day.

229. Defendants' false statements and omissions during the Class Period caused the Company's securities to trade at artificially inflated prices during the Class Period. However, as the conditions described above were revealed to the market, the Company's stock price fell by \$44.23 per share—or 97.46 percent—from its Class Period-high closing price of \$45.38 per share on December 16, 2010, and the market price of the Notes declined by \$692.50, or 64.87 percent, from their Class Period-high closing price of \$1,067.50 on June 22, 2011.

230. The truth, which was known to Defendants but concealed from the investing public during the Class Period was that:

(a) the Company's financial statements, as set forth in its periodic reports filed with the SEC, included, among other things, material misstatements regarding value-added taxes, income tax expense and liability, the capitalization of work in progress, and the classification of capital and operating leases that inflated the Company's reported financial performance in 2009 and 2010, and gave a false impression of the success of its effort to launch a new network;

- (b) the Company's efforts to transition away from its iDEN-based infrastructure were a failure from the outset, causing its subscribers to defect in droves;
- (c) the Company's replacement network in key markets such as Mexico was not ready to support the service load created by the phase-out of the iDEN network;
- (d) the outlook for profitability at Nextel Mexico had dramatically deteriorated, but deferred tax assets (whose value is tied to projected profitability) held on Nextel Mexico's balance sheet and consolidated onto the balance sheet of NII were maintained at artificially inflated values; and
- (e) as a result of the foregoing, Defendants lacked a rational basis for their projections of the Company's performance and profitability.

C. Loss Causation

231. During the Class Period, as detailed herein, Defendants made false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the prices of NII and NII Capital's securities, and operated as a fraud or deceit on Class-Period purchasers of NII and NII Capital's securities by misrepresenting the value of assets set forth in NII's financial statements, and the prospects and outlook for NII.

232. Later, as the Company's prior incorrect statements, misrepresentations, and fraudulent conduct were disclosed to the market, the price of NII and NII Capital's securities fell as the prior artificial inflation came out of their prices. As a result of their purchases of the NII and NII Capital securities during the Class Period, Plaintiffs and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

D. Inapplicability of Statutory Safe Harbor

233. Defendants' verbal "Safe Harbor" warnings accompanying their oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

234. Defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of NII and/or NII Capital who knew that the FLS was false. None of the historic or present tense statements made by Defendants were assumptions underlying or relating to any plan, projection, or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by Defendants expressly related to, or stated to be dependent on, those historic or present tense statements when made.

E. Scienter Allegations

235. During the Class Period, Defendants had both the motive and opportunity to commit fraud. They also had actual knowledge of the misleading nature of the statements they made or acted with reckless disregard for the true information known to them at the time for the reasons discussed above. In so doing, Defendants committed acts and practiced and participated in a course of business that operated as a fraud or deceit on purchasers of NII and NII Capital securities during the Class Period.

F. Presumption of Reliance

236. Plaintiffs will rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) the omissions and misrepresentations were material;

(c) NII and NII Capital securities traded in an efficient market;

(d) the misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of NII and NII Capital securities; and

(e) Plaintiffs and other members of the Class purchased NII and NII Capital securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

237. At all relevant times, the markets for NII and NII Capital securities were efficient for the following reasons, among others:

(a) as a regulated issuer, NII filed periodic public reports with the SEC;

(b) NII regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts, and other similar reporting services;

(c) NII was followed by several securities analysts employed by major brokerage firm(s) who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firm(s) and that were publicly available and entered the public marketplace; and

(d) NII's securities were actively traded in efficient markets, including the NASDAQ, where the Company's common stock trades under the ticker symbol "NIHD;" NII Capital's securities were actively traded in efficient markets, including the bond market.

238. As a result of the foregoing, the market for NII and NII Capital securities promptly digested current information regarding NII and NII Capital from all publicly available sources and reflected such information in the price of NII and NII Capital securities. Under these circumstances, all purchasers of NII and NII Capital securities during the Class Period suffered similar injury through their purchase of NII and NII Capital securities at artificially inflated prices and the presumption of reliance applies.

239. Further, to the extent that Defendants concealed or improperly failed to disclose material facts with regard to the Company and its operations, Plaintiffs are entitled to a presumption of reliance in accordance with *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153 (1972).

G. Counts Against the Defendants Under the Exchange Act

COUNT IV

For Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against the Exchange Act Defendants

240. Plaintiffs repeat, incorporate, and reallege paragraphs 1 through 239 by reference.

241. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or recklessly disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

242. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiffs and others similarly situated in connection with their purchases of NII and NII Capital securities during the Class Period.

243. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for NII and NII Capital securities. Plaintiffs and the Class would not have purchased NII and NII Capital securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

244. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their purchases of the NII and NII Capital securities during the Class Period.

COUNT V

For Violations of Section 20(a) of the Exchange Act Against the Individual Defendants

245. Plaintiffs repeat, incorporate, and reallege paragraphs 1 through 244 by reference.

246. The Individual Defendants acted as controlling persons of NII within the meaning of Section 20(a) of the Exchange Act. By virtue of their positions and their power to control public statements about NII, the Individual Defendants had the power and ability to control the actions of NII and NII Capital and their employees. By reason of such conduct, Defendants are liable pursuant to Section 20(a) of the Exchange Act.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23;
- B. Awarding Plaintiffs and the members of the Class damages and interest;
- C. Awarding Plaintiffs' reasonable costs, including attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

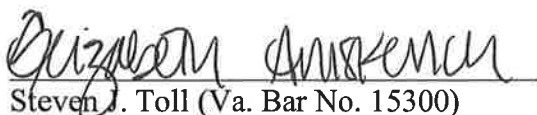
VIII. JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: March 4, 2014

Respectfully submitted,

**COHEN MILSTEIN SELLERS & TOLL
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