

MOBIVITY HOLDINGS CORP.
Form PRE 14C
October 03, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 14C
(Rule 14c-101)

SCHEDULE 14C INFORMATION

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934

Check the appropriate box:

Preliminary Information Statement

Definitive Information Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))

MOBIVITY HOLDINGS CORP.
(Name of Registrant as Specified in Its Charter)

Payment of Filing Fee (Check the appropriate box):

No fee required

Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11

(1) Title of each class of securities to which transaction applies: _____

(2) Aggregate number of securities to which transaction applies: _____

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined): _____

(4) Proposed maximum aggregate value of transaction: _____

(5) Total fee paid: _____

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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(1) Amount Previously Paid: _____

(2) Form, Schedule or Registration Statement No.: _____

(3) Filing Party: _____

(4) Date Filed: _____



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MOBIVITY HOLDINGS CORP.
58 West Buffalo St, Suite 200
Chandler, Arizona 85225
(866) 622-4261

NOTICE OF ACTION BY
WRITTEN CONSENT OF MAJORITY STOCKHOLDERS

WE ARE NOT ASKING YOU FOR A PROXY
AND YOU ARE REQUESTED NOT TO SEND US A PROXY

THIS IS NOT A NOTICE OF A MEETING OF STOCKHOLDERS AND NO STOCKHOLDERS' MEETING WILL
BE HELD TO CONSIDER ANY MATTER DESCRIBED HEREIN.

We are furnishing this notice and the accompanying information statement (the "Information Statement") to the holders of shares of common stock, par value \$0.001 per share ("Common Stock"), of Mobivity Holdings Corp. (the "Company") pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Regulation 14C and Schedule 14C thereunder, and Section 78.320 of the Nevada Revised Statutes (the "NRS") in connection with the approval of the actions described below (the "Actions") taken by written consent of the holders of a majority of the issued and outstanding shares of Common Stock:

1. The amendment of the Company's Articles of Incorporation to effect a reverse stock split of the outstanding shares of Common Stock at a specific ratio within a range from 1-for-5 to 1-for-10 as the Board of Directors shall determine; and
2. The amendment of the Company's Articles of Incorporation to decrease the number of authorized shares of Common Stock from 150,000,000 to 50,000,000.

The purpose of this Information Statement is to notify our stockholders that on August 15, 2013 the owners of approximately 52.8% of our issued and outstanding shares of Common Stock executed a written consent approving the Actions. In accordance with Rule 14c-2 promulgated under the Exchange Act, the Actions will become effective no sooner than 20 days after we mail this notice and the accompanying Information Statement to our stockholders.

The written consent that we received constitutes the only stockholder approval required for the Actions under Nevada law and, as a result, no further action by any other stockholder is required to approve the Actions and we have not and will not be soliciting your approval of the Actions.

This notice and the accompanying Information Statement are being mailed to our stockholders on or about October *, 2013. This notice and the accompanying Information Statement shall constitute notice to you of the action by written consent in accordance with Rule 14c-2 promulgated under the Exchange Act.

By Order of the Board of Directors,

/s/ Dennis Becker
Chief Executive Officer

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MOBIVITY HOLDINGS CORP.
58 West Buffalo St, Suite 200
Chandler, Arizona 85225
(866) 622-4261

INFORMATION STATEMENT

Action by Written Consent of Majority Stockholders

WE ARE NOT ASKING YOU FOR A
PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY

GENERAL

This Information Statement is being furnished to the holders of shares of common stock, par value \$0.001 per share (“Common Stock”), of Mobivity Holdings Corp. in connection with the action by written consent of the holders of a majority of our issued and outstanding shares of Common Stock taken without a meeting to approve the actions described in this Information Statement. In this Information Statement, all references to “the Company,” “we,” “us” or “our” refer to Mobivity Holdings Corp. We are mailing this Information Statement to our stockholders of record on or October *, 2013.

Pursuant to Rule 14c-2 promulgated by the Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the actions described herein will not become effective until 20 calendar days following the date on which this Information Statement is first mailed to our stockholders.

The entire cost of furnishing this Information Statement will be borne by the Company. We will request brokerage houses, nominees, custodians, fiduciaries and other like parties to forward this Information Statement to the beneficial owners of the Company’s Common Stock held of record by them and will reimburse such persons for their reasonable charges and expenses in connection therewith.

Actions by Majority Stockholders

On August 9, 2013, in accordance with Section 78.315 of the Nevada Revised Statutes, as amended (the “NRS”), the Board of Directors (the “Board”) of the Company unanimously adopted resolutions approving the following actions (the “Actions”):

- Action One: The amendment of our Articles of Incorporation to effect a reverse stock split of the outstanding shares of Common Stock at a specific ratio within a range from 1-for-5 to 1-for-10 as the Board of Directors shall determine (the “Reverse Stock Split”).
- Action Two: The amendment of our articles of incorporation (the “Articles of Incorporation”) to decrease the number of authorized shares of Common Stock from 150,000,000 to 50,000,000 (the “Authorized Capital Decrease”).

As of the close of business on August 15, 2013, we had 97,475,447 shares of Common Stock outstanding and entitled to vote on the Actions. Each share of outstanding Common Stock is entitled to one vote.

On August 15, 2013, pursuant to Section 78.320 of the NRS and Article I, Section 7 of our Bylaws, we received written consents approving the Actions from stockholders holding an aggregate of 51,447,127 shares of our Common Stock representing 52.8% of our outstanding shares of Common Stock (the “Majority Stockholders”). Thus, your consent is not required and is not being solicited in connection with the approval of the Actions.

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Dissenters' Rights of Appraisal

Stockholders who did not consent to the Actions are not entitled to assert dissenters' or appraisal rights under the NRS.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information regarding our shares of Common Stock beneficially owned as of August 7, 2013 for (i) each stockholder known to be the beneficial owner of 5% or more of the Company's outstanding shares of Common Stock, (ii) each named executive officer and director, and (iii) all executive officers and directors as a group. A person is considered to beneficially own any shares: (i) over which such person, directly or indirectly, exercises sole or shared voting or investment power, or (ii) of which such person has the right to acquire beneficial ownership at any time within 60 days. Unless otherwise indicated, the address of each shareholder is c/o Mobivity Holdings Corp., 58 West Buffalo St, Suite 200, Chandler, AZ 85225.

For purposes of this table, a person or group of persons is deemed to have "beneficial ownership" of any shares of Common Stock that such person has the right to acquire within 60 days of this Information Statement. For purposes of computing the percentage of outstanding shares of our Common Stock held by each person or group of persons named above, any shares that such person or persons has the right to acquire within 60 days of this Information Statement is deemed to be outstanding, but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. The inclusion herein of any shares listed as beneficially owned does not constitute an admission of beneficial ownership. The beneficial ownership of each person was calculated based on 97,338,482 shares of our Common Stock outstanding as of August 7, 2013.

Name of Beneficial Owner	Number of Shares	Percentage
CommerceTel Canada Corporation 1 First Canadian Place 100 King Street West Toronto, ON M5X 1B2	7,267,972	7.5%
Front Door Insights, LLC 22 Oneida Trail Malvern, OH 44644	7,000,000	7.2%
Jeffrey Porter(1) 300 Drakes Landing Road, Suite 175 Greenbrae, CA 94941	13,180,953	13.5%
Cornelis F. Wit 2101 West Commercial Blvd., Suite 3500 Fort Lauderdale, FL 33309	5,804,976	6.0%
ACT Capital Management, LLLP(2) 2 Radnor Corporate Center, Suite 111 Radnor, PA 19087	10,064,576	10.3%
John S. Lemak(3) 2828 Routh Street, Suite 500 Dallas, Texas 75201	6,823,500	7.0%
Dennis Becker (4)	8,186,845	8.3%
Timothy Schatz(5)	277,085	*
Michael K. Bynum(6)	2,120,022	2.1%
David Jaques(7)	58,332	*
Peter Brodsky(8)	750,000	*

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Doug Schneider(9)	214,369	*
John Harris(10)	208,332	*
Tom Tolbert(11)	8,738,858	9.0%
Geri Suster(12)	17,215	*
Jeff Hasen	-0-	*
Executive Officers and Directors as a Group (ten persons)	20,571,058	21.1%

* Denotes less than 1%

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- (1) Includes 8,948,169 shares owned by Porter Partners, LP, 1,026,233 shares owned by Ben Joseph Partners, 1,456,551 shares owned by EDJ Limited, and 1,750,000 shares owned by Porter Family Living Trust dtd 9/5/2006. Jeffrey Porter, as the General Partner of Porter Capital Management Co., which is the managing general partner of Porter Partners, LP, has voting and dispositive power over the securities. Jeffrey Porter, as the General Partner of Porter Capital Management Co., which is the managing general partner of Ben Joseph Partners, has voting and dispositive power over the securities. Jeffrey Porter, as the General Partner of Porter Capital Management Co., which is the trading advisor of EDJ Limited, has voting and dispositive power over the securities. Jeffrey Porter, as trustee of the Porter Family Living Trust dtd 9/5/2006, has voting and dispositive power over the securities.
- (2) ACT Capital Management, LLLP is the beneficial owner of 6,750,000 shares of common stock and 3,314,576 shares of the Company's common stock issuable upon exercise of warrants to purchase shares of the Company's common stock to the extent that after giving effect to such exercise, the holder of the warrant would not beneficially own in excess of 9.99% of the shares of the Company's common stock outstanding immediately after giving effect to such exercise. The holder of the warrant may remove such limitation on exercise of the warrant by providing 60 days prior written notice to the Company. Amir L. Ecker and Carol G. Frankenfield are the General Partners of ACT Capital Management, LLLP. Investment decisions made on behalf of ACT Capital Management, LLLP are made primarily by its General Partners.
- (3) Includes 140,000 shares owned by Sandor Capital, 2,981,881 shares owned by Sandor Capital Master Fund, 701,619 shares owned by John S. Lemak IRA Rollover, 2,500,000 shares owned by Mobivity Partners and 500,000 shares owned by JSL Kids Partners. Mr. Lemak has voting and dispositive power over the securities and may be deemed to be the beneficial owner of such securities.
- (4) Includes 7,267,972 shares owned by CommerceTel Canada Corporation ("CTel Canada") of which Mr. Becker may be deemed to be the beneficial owner in his capacity as a former President and Chief Executive Officer of that entity. Mr. Becker disclaims beneficial ownership in the shares owned by CTel Canada in excess of his proportional ownership of CTel Canada. Also includes 560,142 shares underlying options that are exercisable as of July 31, 2013.
- (5) Includes 100,603 shares underlying options that are exercisable as of July 31, 2013.
- (6) Includes 1,738,858 shares underlying options that are exercisable as of July 31, 2013, and 381,164 shares owned by The Michael and Valerie Bynum Living Trust, of which Mr. Bynum is trustee. Does not include 60,000 shares purchased by Mr. Bynum subsequent to August 7th, 2013.
- (7) Includes 58,332 shares underlying options that are exercisable as of July 31, 2013.
- (8) Includes 750,000 shares owned by Brodsky Family Trust of which Mr. Brodsky may be deemed to be the beneficial owner in his capacity as trustee of that entity.
- (9)

Includes 66,666 shares underlying options that are exercisable as of July 31, 2013, and 147,703 shares owned by DPS Family Partnership, of which Mr. Schneider is trustee.

(10) Includes 83,332 shares underlying options that are exercisable as of July 31, 2013.

(11) Includes 7,000,000 shares owned by Front Door Insights, LLC of which Mr. Tolbert may be deemed to be the beneficial owner in his capacity as member of that entity. Also includes 1,738,858 shares underlying options that are exercisable as of July 31, 2013.

(12) Includes 17,215 shares underlying options that are exercisable as of July 31, 2013.

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INTERESTS OF CERTAIN PERSONS IN OR OPPOSITION TO MATTERS TO BE ACTED UPON

No officer or director of the Company has any substantial interest in the Actions, other than his or her role as an officer or director of the Company.

ACTION ONE – AMENDMENT TO THE ARTICLES OF INCORPORATION TO EFFECT THE REVERSE STOCK SPLIT

On August 9, 2013, the Board adopted resolutions authorizing an amendment to the Company's Articles of Incorporation to effect a reverse stock split of the outstanding shares of Common Stock at a specific ratio within a range from 1-for-5 to 1-for-10 as the Board shall determine (the "Reverse Stock Split").

On August 15, 2013, pursuant to Section 78.320 of the NRS, we received written consents from the Majority Stockholders approving the amendment to the Articles of Incorporation to effect the Reverse Stock Split at a ratio as determined by the Board within the foregoing parameters.

Reasons for the Reverse Stock Split

The Reverse Stock Split is intended to increase the per share stock price of our Common Stock. As of August 9, 2013, the last reported closing price of the Common Stock was \$1.36 per share. The Board believes that if we are successful in maintaining a higher price per share of our Common Stock, we will be able to generate greater interest among investors and institutions. If we are successful in generating such interest, we anticipate that our Common Stock would have greater liquidity and a stronger investor base. Our Board also believes that a higher stock price is necessary in order for our Common Stock to qualify for a listing on a national stock exchange or the NASDAQ Stock Market.

The Company cannot assure you that it will be successful in generating greater interest among investors and institutions or that the Common Stock will qualify for a listing on a national stock exchange or the NASDAQ Stock Market. Stockholders should also note that if the Company elects to implement a Reverse Stock Split, there is no assurance that prices for shares of the Common Stock after the Reverse Stock Split will increase proportionally to the exchange ratio of the Reverse Stock Split (or at all). Other factors such as our financial results, market conditions and the market perception of our business may adversely affect the market price of our Common Stock. The Company cannot guarantee to stockholders that the price of its shares will reach or sustain any price level in the future, and it is possible the Reverse Stock Split will have no lasting impact on its share price. Furthermore, the liquidity of our Common Stock could be adversely affected by the reduced number of shares that would be outstanding after the Reverse Stock Split. Consequently, there can be no assurance that the Reverse Stock Split will achieve the desired results.

The Board may determine in its discretion the exchange ratio for the Reverse Stock Split, provided that such exchange ratio is from of 1-for-5 to 1-for-10, whereby one post-Reverse Stock Split share of Common Stock (the "New Shares") is exchanged for up to ten pre-Reverse Stock Split shares of Common Stock (the "Old Shares"). In determining the range of Reverse Stock Split ratios, the Board considered numerous factors, including:

- the historical and projected performance of the Common Stock and volume level before and after the Reverse Stock Split;
- the prevailing trading price for the Common Stock and the volume level thereof;
- potential devaluation of our market capitalization as a result of the Reverse Stock Split;

- prevailing market conditions and general economic and other related conditions prevailing in our industry and in the marketplace generally; and
- the projected impact of the Reverse Stock Split ratio on trading liquidity in the Common Stock.

In evaluating the Reverse Stock Split, the Board also took into consideration negative factors associated with reverse stock splits in general. These factors include the negative perception of reverse stock splits held by some investors, analysts and other stock market participants, as well as the fact that the stock price of some companies that have effected reverse stock splits has subsequently declined back to pre-reverse stock split levels. The Board, however, determined that these negative factors were outweighed by the potential benefits.

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Effects of the Reverse Stock Split

At the Effective Time (as defined below), each lot of up to ten Old Shares, as determined by the Board, issued and outstanding immediately prior to the Effective Time will, automatically and without any further action on the part of our stockholders, be combined into and become one New Share, subject to the treatment for fractional shares described below, and each certificate which, immediately prior to the Effective Time, represented Old Shares will be deemed, for all corporate purposes, to evidence ownership of New Shares. **STOCKHOLDERS SHOULD NOT DESTROY ANY STOCK CERTIFICATE(S) AND SHOULD NOT SUBMIT ANY CERTIFICATE(S) UNTIL REQUESTED TO DO SO.**

The Reverse Stock Split will be effected simultaneously for all our then-existing Old Shares and the exchange ratio will be the same for all of our shares of outstanding Common Stock. The Reverse Stock Split will affect all of our stockholders uniformly and will not affect any stockholder's percentage ownership interests in the Company, subject to the treatment for fractional shares described below. See "Fractional Shares" below. The New Shares issued pursuant to the Reverse Stock Split will be fully paid and non-assessable. All New Shares will have the same par value, voting rights and other rights as Old Shares. Stockholders of the Company do not have preemptive rights to acquire additional shares of Common Stock. The following table provides the effects of the Reverse Stock Split based on the ratios in the specified range and is based on 97,811,977 shares of Common Stock outstanding as of October 1, 2013.

Proposed Reverse Stock Split	Percentage Reduction in the Outstanding Shares of Common Stock		Common Stock Outstanding after the Reverse Stock Split	Common Stock Available for Issuance after the Reverse Stock Split and Decrease in Authorized Common Stock
	80.0	%		
1 for 5	80.0	%	19,562,395	30,437,605
1 for 6				