



August 8, 2008

Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116



LETTER OF COMMENT NO. 73

File Reference No. 1600-100

Re: Disclosure of Certain Loss Contingencies- An amendment of SFAS 5 and 141(R)

Dear Technical Director:

Nortel Networks Corporation (Nortel) appreciates the opportunity to comment on the Financial Accounting Standards Board Exposure Draft on "Disclosure of Certain Loss Contingencies" ("proposed Statement"). Nortel supports the Board's attempt to enhance disclosure of information to investors and converge with global standards developed by the International Accounting Standards Board.

Nortel is a global supplier of communications equipment, software and services, serving both telephone service provider and business and governmental enterprise customers, with over \$10 billion in revenues. While Nortel is incorporated under the laws of Canada and is headquartered in Toronto, Ontario, our securities are traded on the New York Stock Exchange (in addition to the Toronto Stock Exchange), we follow accounting principles generally accepted in the United States of America, and are considered a U.S. domestic filer and therefore file Annual and Quarterly Reports on Forms 10-K and 10-Q with the Securities and Exchange Commission. We currently have various types of loss contingencies arising from contractual disputes, product performance issues, intellectual property infringement, employee matters, environmental matters and other general litigation matters, all of which would be affected by the proposed accounting standard.

The body of this letter includes our general comments and observations on the Exposure Draft. Appendix A to this letter includes our responses to the specific questions raised.

We are strongly opposed to the proposed expanded disclosure guidance in its current form. The proposed Statement would significantly increase the volume of required disclosures, necessitate creation and administration of significant control processes to aggregate information supporting the expanded disclosures, potentially require that we choose between compromising attorney client privilege and a qualified audit opinion, and potentially prejudice the outcome of active litigation. We believe each of these potential outcomes represents a substantial cost to shareholders. Conversely, we believe the usefulness to investors of the expanded disclosures will be limited, especially after aggregation of such information necessary to avoid a prejudicial impact on active litigation.

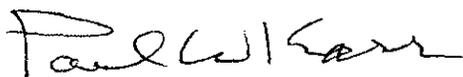
While we understand the desire of the FASB to be responsive to its constituents, we believe the proposed Statement inappropriately attempts to deal with a complex accounting judgment by providing detailed disclosures, the stated objective of which are to allow investors the ability to reach conclusions about the "likelihood, timing and amount of future cash flows associated with loss contingencies." If information was available to reliably meet that objective, the conclusions would be disclosed pursuant to the existing requirements of SFAS 5. The reality is that it is quite difficult for management, with full access to all available information and expert legal advice to reach meaningful decisions about these matters for internal management or external reporting purposes. We do not understand why it is reasonable to believe that users will be able to reach meaningful conclusions with a subset of the available information and without access to the legal experts directly engaged in the matter.

We respectfully suggest that the Board significantly modify or eliminate altogether the proposed detailed quantitative and qualitative disclosures applicable to unrecognized contingencies. We believe those disclosures, at a case-level, are prejudicial by definition. On the other hand, when aggregated, the disclosures are not useful for their stated purpose. We believe the current SFAS 5 accounting and disclosure framework is generally appropriate but we recognize that practice in applying that framework may have developed contrary to the Board's original intent. If the Board chooses to continue with this project we would support a standard that would lead to more disclosure of the nature of the different types of substantive litigation facing a preparer with reference to publicly available case-specific documents. We would also support the tabular roll-forward of recognized contingencies with appropriate exceptions for instances where the disclosure would be prejudicial.

Nortel supports the Board's efforts to converge with IFRS disclosure requirements per IAS 37. It is our understanding that the IASB is aware of similar concerns on the part of constituents regarding the prejudicial nature and practical difficulties in presenting the required quantitative and qualitative disclosures, and thus, is in the process of reconsidering the disclosure requirements for loss contingencies per IAS 37.¹ To the extent possible, we would support coordination of any FASB and IASB projects in this space. A converged Standard will contribute to minimizing the disruption and cost of the eventual adoption of IFRS by US public companies.

We appreciate the opportunity to comment on the Exposure Draft. If you would like to further discuss any of our comments, please do not hesitate to contact me at (905) 863-3653 or pkarr@nortel.com.

Sincerely,



Paul W. Karr
Controller

C: Paviter S. Binning, Executive Vice President and Chief Financial Officer

¹ IASB Full Project Report, paragraphs 53-56
<http://www.iasb.org/NR/rdonlyres/B2EE99F3-C48E-40A1-8827-137C92C0EF4/0/LiabIAS37projectJune08.pdf>

APPENDIX A

1. Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

The disclosure requirements would result in significant direct incremental costs, which we believe far exceed the benefit to financial statement users.

Benefits

The stated objective of the project is to allow investors the ability to reach conclusions about the "likelihood, timing and amount of future cash flows associated with loss contingencies." When information is available to reliably meet that objective, the conclusions should be disclosed pursuant to the existing requirements of SFAS 5. Frequently, it is quite difficult for management, with full access to all available information and expert legal advice, to reach meaningful decisions about these matters for internal management or external reporting purposes. We do not understand why it is reasonable to believe that users will be able to reach meaningful conclusions with a subset of the available information and without access to the legal experts directly engaged in the matter.

Direct incremental costs

The proposed quantitative and qualitative disclosures requiring detailed description of the legal and contractual bases for the contingency, and factors and assumptions used to assess and estimate the loss contingency, would require more complex and lengthier disclosures (e.g., with reference to applicable legal precedents as well as statutory and regulatory interpretation). Extended audit procedures to verify and support the estimates would entail additional discussion with outside legal counsel and internal management. Additionally, new internal controls will need to be instituted to support the expanded disclosure identification and quantification process and be subject to testing and certification by management under SOX requirements. Such an exercise would significantly increase costs of legal, audit and internal resources involved in compiling and testing these disclosures. Disclosure of insurance and indemnification arrangements would require coordination with insurance and other third parties for assessment of any possible recovery of loss contingencies (irrespective of occurrence).

Indirect incremental costs

Complying with the disclosures as proposed (even with the availability of the prejudicial exemption) might require a waiver of privileged attorney work product, which could significantly impact the outcome of litigation. Requiring an estimate of the maximum potential impact of a claim for an unstated amount along with disclosure on sources for possible recovery (insurance, indemnification) would in effect, compel disclosure of confidential litigation assessments with the only real beneficiary being the opposing litigation party and their counsel.

Although the proposed Statement aims at alleviating the prejudicial impact of the mandatory disclosures by allowing for aggregation of disclosures by nature of loss, we believe that the minimum disclosure requirements in paragraph 11 of the proposed Statement require disaggregation of information and therefore be would be prejudicial to the outcome of pending litigation being disclosed.

- Paragraph 7 states “*The disclosures* required by this paragraph may be aggregated by the nature of the *loss contingency*”, our outside legal counsel have pointed out the discovery process in litigation procedures will likely result in the disaggregation of information disclosed.
- Quantitative disclosures per paragraph 7a permit aggregation by nature of loss, the qualitative disclosures per paragraph 7b (e.g., requirement to discuss how the loss arose, legal or contractual basis, most likely outcome, significant assumptions made by the entity in estimating the amounts) would invariably result in disaggregation of information disclosed.
- Tabulation requirements under paragraph 8 being made at an aggregate level, the requirement to provide “*qualitative description of the significant activity in the reconciliation*” would result in disaggregation of information disclosed.

Other indirect potential costs include litigation costs associated with the forward-looking judgments required under the proposed rules. We noted that the proposed expanded disclosures would not be covered by PSLRA safe harbor rules and would not provide issuers any protection against lawsuits arising from disclosure of “*highly uncertain estimates supplemented by qualitative description* (paragraph A16).” The threat of such potential shareholder and other litigation would also place a strain on relationships with legal and audit firms engaged by the issuer to corroborate the disclosures presented in the financial statements.

Requiring disclosure of severe impact items irrespective of likelihood would result in disclosure of unmeritorious and exaggerated claims and encourage such claims, with the expectation that the highlighted disclosure for “severe impact” will force the company to settle the claim for the nuisance value of such litigation. What a boon for the plaintiff’s bar!

2. Do you agree with the Board’s decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?

Nortel does not have any multiemployer plans.

3. Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?

We believe that severe impact disclosures regardless of likelihood of loss are not meaningful. This requirement ignores the importance of assessing the likelihood of the loss, and would result in disclosure of exaggerated remote loss contingencies. Also, in our experience with litigation related loss contingencies, in most cases the timing of resolution cannot be pinpointed to 1 year (except maybe in limited cases such as nuisance value settlement cases or where the statute of limitations expires in 1 year). We noted that this requirement is not consistent with the disclosure requirements of IAS 37.

4. Paragraph 10 of Statement 5 requires entities to “give an estimate of the possible loss or range of loss or state that such an estimate cannot be made.” One of financial statement users’ most significant concerns about disclosures under Statement 5’s requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity’s best estimate of the maximum possible exposure to loss. Additionally, entities would be

permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity's actual exposure.

a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?

No. If there is no stated claim or assessment amount, any quantification in the form of maximum exposure or as a range, would be highly subjective and could be highly prejudicial to the outcome of case. It will also be very difficult to verify the estimates for audit purposes unless validated by legal opinion from outside counsel (which we note in response to Question 1 results in incremental cost). The highly subjective nature of these estimates combined with other factors such as level of objective information available (through discovery) will present significant challenges in the estimation process. Also, it is our understanding that outside counsel may be unwilling to accept the risk of quantifying the estimated loss or range of loss or, alternatively, any input from such counsel would be heavily qualified. We do not see how such heavily qualified quantitative disclosure can be considered reliable information by our financial statement users.

The quantitative disclosures in paragraph 7 of the proposed Statement require disclosure of possible recoveries of loss contingencies through insurance and indemnification agreements. Firstly, an insurance company would not consider or admit a claim until the contingency was close to resolution (determining probability of recovery in earlier stages of litigation may not be possible), and secondly, even if this were readily available, disclosure would only encourage the plaintiff to increase the claimed amount.

Therefore, we believe that this requirement would create significant additional effort and expense without providing any reliable information to the financial statement user.

b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity's actual exposure? Why or why not?

No, we don't believe it should be required because disclosing that information at an individual case-level is prejudicial, by definition. Conversely, aggregating the information above the case-level to mitigate the prejudicial aspect of the information diminishes any perceived usefulness to investors in predicting the ultimate cash flows

c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?

We believe the current SFAS 5 requirements generally fulfill user needs for quantitative information without compromising the company's legal position in litigation related loss contingencies.

If it is the Board's intent to expand data available to investors, we would suggest limiting the level of disclosure to information that "*can be determined by reference to court documents, which are publicly available (paragraph A15)*". We propose that quantitative disclosures should be limited to aggregation by nature of loss contingencies, number of claims, stated claim amounts and, for instances where the claim is unstated, a statement that claim is unstated.

5. If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?

No. Timing of discovery and status of legal actions will determine the level of information available to make an estimate; however, when there is no specific claim amount or when stating a claim is not permitted under certain legal jurisdictions, any estimate, whether made by outside legal counsel or management, would be considered highly subjective and prejudicial at the case level.

6. Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?

We agree with the Board's decision and its reasoning regarding not requiring disclosure of settlement offers.

7. Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?

Tabulation of recognized loss contingencies on an aggregate basis may provide limited information on assessing impact to future cash flows. However, the current tabulation would not disclose amounts recognized in the financial statements for settlements involving non-cash consideration (e.g., patent infringement cases settled through exchange of cross licenses, any settlements in product credits for non-contractual contingencies with customers accounted for as a reduction in revenue). Additionally, even when aggregated, such tabulation could be detrimental to the interest of the company, as discussed in our response to Question 1.

8. This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

While we agree that there should be an exemption for disclosing prejudicial information, we believe that the proposed quantitative and qualitative disclosure requirements (including mandatory discussion on maximum potential loss, legal and contractual basis of contingency, factors affecting outcome, most likely outcome, possible recoveries etc.), and the mandatory requirements for potentially "severe impacts" would combine to render the exemption ineffective.

9. If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?

As indicated above, since we disagree on the effectiveness of the prejudicial exemption (given the level of mandatory quantitative and qualitative disclosures which would expose the defendant's legal stance), we do not have any comments on this question at this time.

10. The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, Provisions, Contingent Liabilities and Contingent Assets, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be extremely rare. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be rare (instead of extremely rare). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?

As indicated above, since we disagree on the effectiveness of the prejudicial exemption (given the level of mandatory quantitative and qualitative disclosures which would expose the defendant's legal stance), we do not have any comments on this question at this time.

11. Do you agree with the description of prejudicial information as information whose "disclosure . . . could affect, to the entity's detriment, the outcome of the contingency itself"? If not, how would you describe or define prejudicial information and why?

Yes.

12. Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

APB Opinion number 28² requires that contingencies be disclosed in quarterly reports in the same manner required for annual reports until the contingencies have been removed, resolved or have become immaterial. We believe that the APB 28, paragraph 22 requirement should be applied only under the current SFAS 5 disclosure requirements.

It would be impractical (both, from a time and cost perspective) to provide expanded disclosures on a quarterly basis since such disclosures would involve deriving complex estimates based on extensive collection, analysis and review of information, including discussion with outside counsel and auditors, relating to loss contingencies which results in significant incremental costs. If the Board should decide to require expanded disclosure under the proposed Statement, we request that such expanded requirements should be restricted to annual reports.

² APB OPINION NO. 28: INTERIM FINANCIAL REPORTING: Opinion Part I

22. Contingencies and other uncertainties that could be expected to affect the fairness of presentation of financial data at an interim date should be disclosed in interim reports in the same manner required for annual reports.⁴ Such disclosures should be repeated in interim and annual reports until the contingencies have been removed, resolved, or have become immaterial.

⁴ The significance of a contingency or uncertainty should be judged in relation to annual financial statements. Disclosures of such items should include, but not be limited to, those matters that form the basis of a qualification of an independent auditor's report.

13. Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement? If so, what other information would you require?

No.

14. Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

Per this Exposure Draft, the proposed disclosures will be required to commence with financial statements and SEC filings for the year in which we all presently live. Unless significant modifications are made, it would be a considerable challenge to implement the expanded disclosures under the Statement for the timeline proposed. Therefore, we request the Board to defer the effective date of such guidance by one year to permit adequate preparation for transition.