
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 31, 2023

Mobivity Holdings Corp.

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction of
incorporation)

000-53851
(Commission
File Number)

26-3439095
(IRS Employer
Identification No.)

3133 West Frye Road, # 215
Chandler, Arizona 85226
(Address of principal executive offices) (Zip Code)

(877) 282-7660
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report.)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
None	None	None

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On January 31, 2023, Mobivity Holdings Corp. (the “Company”) entered into Amendment No. 1 (the “Amendment”) to Amended and Restated Credit Facility Agreement and Convertible Notes which amends our existing Amended and Restated Credit Facility Agreement, dated as of November 11, 2022, between the Company and Thomas B. Akin, a director of the Company (the “Existing Credit Agreement” and as amended by the Amendment, the “Credit Agreement”) and any convertible notes issued thereunder. The Amendment amends the Existing Credit Agreement to extend the maturity of the Credit Agreement and related convertible notes thereunder until December 1, 2025. Principal payments have been deferred to a period beginning on January 1, 2024 and ending December 1, 2025, and further provides that any accrued interest on unpaid advances under the Credit Agreement is to be paid quarterly in shares of our common stock, at a price per share equal to the volume-weighted average price of our common stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the ninety (90) trading days immediately preceding such date. The Amendment provides for corresponding amendments to the form of convertible note to be issued under the Credit Agreement in the future and any outstanding convertible notes issued under the Existing Credit Agreement.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information disclosed in Item 1.01 is incorporated by reference into this Item.

Item 3.02. Unregistered Sales of Equity Securities.

The information disclosed in Item 1.01 is incorporated by reference into this Item.

The foregoing securities were sold to an “accredited investor” as that term is defined in Rule 501 of Regulation D of the U.S. Securities and Exchange Commission (“SEC”), without the use of any general solicitations or advertising to market or otherwise offer the securities for sale. Based on the foregoing, we believe that the offer and sale of these securities were exempt from the registration requirements of the Securities Act of 1933, as amended, pursuant to Section 4(a)(2) and Rule 506(b) thereof. Registration of sales to “accredited investors” is preempted from state regulation by Section 18 of the Securities Act, though states may require the filing of notices, a fee and other administrative documentation.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

EXHIBIT INDEX

Exhibit No.	Description
10.1	<u>Amendment No. 1 to Amended and Restated Credit Facility Agreement and Convertible Notes, dated as of January 31, 2023, between Mobivity Holdings Corp. and Thomas B. Akin</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

MOBIVITY HOLDINGS CORP.

Date: February 3, 2023

By: */s/ Dennis Becker*

Dennis Becker

Chairman and Chief Executive Officer

**AMENDMENT NO. 1 TO
AMENDED AND RESTATED CREDIT FACILITY AGREEMENT AND CONVERTIBLE NOTES**

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED CREDIT FACILITY AND CONVERTIBLE NOTES is dated as of January 31, 2023 (this “**Amendment**”), between Mobivity Holdings Corp., a Nevada corporation (“**Borrower**”) and Thomas B. Akin, an individual (“**Lender**”) (each, a “**Party**” and together, the “**Parties**”).

BACKGROUND

- A. The Parties entered into that certain Amended and Restated Credit Facility Agreement dated as of November 11, 2022 (the “**Existing Credit Agreement**”);
- B. Advances under the Existing Credit Agreement were evidenced by the terms of one or more convertible notes (the “**Existing Notes**”), a form of which is attached to the Existing Credit Agreement;
- C. The Parties now desire to amend the Existing Credit Agreement and the Existing Notes as provided herein; and
- D. Unless otherwise defined herein, capitalized terms used in this Amendment shall have the meanings ascribed to them in the Existing Credit Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, and intending to be legally bound, the Parties hereto agree as follows:

AGREEMENT

1. Amendments to Existing Credit Agreement. Upon satisfaction of the conditions set forth in Section 3 hereof, the Existing Credit Agreement is amended pursuant to this Amendment to:

- (a) Amend and restate Section 2.3(b) in its entirety to read as follows:

“Without limiting the foregoing Section 2.3(a), Borrower shall repay the principal amount of all Advances in 24 equal monthly installments commencing on January 1, 2024 and continuing thereafter on the first day of each month (or, if such first day is not a Business Day, on the Business Day immediately succeeding such first day). Interest on the unpaid Advances will accrue from the date of each Advance at a rate equal to fifteen percent (15%) per annum and shall be paid quarterly in kind in Common Stock of the Borrower at a price per share equal to the volume-weighted average price of the Common Stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the ninety (90) Trading Days immediately preceding such date. Interest will be calculated on the basis of 365 days in a year.”

- (b) Amend Section 1 of Exhibit A to Existing Credit Agreement in its entirety to read as follows:

“1. Payment Terms; Maturity. This Note shall bear interest on the unpaid principal amount at the rate of fifteen percent (15%) per annum and shall be paid quarterly in kind in Common Stock of the Borrower at a price per share equal to the volume-weighted average price of the Common Stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the ninety (90) Trading Days immediately preceding such date. The unpaid principal amount shall be paid in 24 equal monthly installments commencing on January 1, 2024 and continuing on the first day of each of the next 23 months thereafter (or, if such first day is not a Business Day, on the Business Day immediately succeeding such first day), with a final payment due on December 1, 2025 at which time all principal shall be due and payable. All payments of principal under this Note will be made in lawful money of the United States of America in immediately available funds at such place as may be designated by Lender to Borrower in writing.

2 . Amendments to Existing Notes Upon satisfaction of the conditions set forth in Section 3 hereof, each Existing Note is amended pursuant to this Amendment to:

- (a) Amend Section 1 in its entirety to read as follows:

“1. Payment Terms; Maturity. This Note shall bear interest on the unpaid principal amount at the rate of fifteen percent (15%) per annum and shall be paid quarterly in kind in Common Stock of the Borrower at a price per share equal to the volume-weighted average price of the Common Stock quoted on the OTCQB ® Venture Market operated by OTC Markets Group Inc. over the ninety (90) Trading Days immediately preceding such date. The unpaid principal amount shall be paid in 24 equal monthly installments commencing on January 1, 2024 and continuing on the first day of each of the next 23 months thereafter (or, if such first day is not a Business Day, on the Business Day immediately succeeding such last day), with a final payment due on December 1, 2025 at which time all principal shall be due and payable. All payments of principal under this Note will be made in lawful money of the United States of America in immediately available funds at such place as may be designated by Lender to Borrower in writing.

3 . Conditions. Notwithstanding any other provision of this Amendment and without affecting in any manner the rights of the Lender hereunder, it is understood and agreed that the effectiveness of Sections 1 and 2 hereof is subject to the execution and delivery of this Amendment by Borrower and Lender.

4 . No Modification. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Existing Credit Agreement, the Existing Notes or constitute a course of conduct or dealing among the parties. Except as amended or consented to hereby, the Existing Credit Agreement and Existing Notes remain unmodified and in full force and effect.

5 . Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Electronically delivered signature pages (PDFs, facsimile, etc.) shall be deemed to be the functional equivalent of originally executed signature pages for all purposes.

6. Successors and Assigns. This Amendment shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and permitted assigns of Lenders. Neither Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated without the prior written consent of the Lender.

7. Governing Law. This Amendment and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of Arizona.

8 . Severability. In case any provision in or obligation under this Amendment or any instrument or agreement required hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

9. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10 . Reaffirmation. Borrower hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the Existing Credit Agreement (after giving effect hereto), and (ii) ratifies and reaffirms the grant of security interest in the Collateral. Borrower hereby consents to this Amendment and acknowledges that the Existing Credit Agreement otherwise remains in full force and effect and is hereby ratified and reaffirmed. The execution of this Amendment shall not operate as a waiver of any right, power or remedy of the Lender or constitute a waiver of any provision of any of the Existing Credit Agreement or the Existing Notes, except as expressly set forth herein.

11. Entire Understanding. This Amendment sets forth the entire understanding of the Parties with respect to the matters set forth herein, and shall supersede any prior negotiations or agreements, whether written or oral, with respect thereto.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has executed this Amendment as of the date set forth above.

BORROWER:

MOBIVITY HOLDINGS CORP.,
a Nevada corporation

By: /s/ Dennis Becker
Name: Dennis Becker
Title: Chief Executive Officer

LENDER:

/s/ Thomas B. Akin
Thomas B. Akin