

MOBIVITY HOLDINGS CORP.
Form S-1/A
July 15, 2016

As filed with the Securities and Exchange Commission on July 15, 2016

Registration No. 333- 212148

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

Amendment No. 1 to

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

MOBIVITY HOLDINGS CORP.
(Exact name of registrant as specified in its charter)

| | | |
|-------------------------------------------------------------|-------------------------------------------------------------|-----------------------------------------|
| Nevada | 3669 | 26-3439095 |
| (State or jurisdiction of incorporation or organization) | (Primary Standard Industrial Classification Code Number) | (I.R.S. Employer Identification No.) |

55 N. Arizona Place, Suite 310
Chandler, Arizona 85225
(877) 282-7660

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Dennis Becker
55 N. Arizona Place, Suite 310
Chandler, Arizona 85225
(877) 282-7660

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Daniel K. Donahue, Esq.
Greenberg Traurig, LLP
3161 Michelson, Suite 1000
Irvine, CA 92612
(949) 732-6500

Approximate date of commencement of proposed sale to the public:

Edgar Filing: MOBIVITY HOLDINGS CORP. - Form S-1/A

As soon as practicable after this Registration Statement becomes effective.



Table of Contents

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b2 of the Exchange Act.

Large accelerated filer o

Accelerated filer o

Non-accelerated filer o (Do not check if a smaller reporting company)

Smaller reporting company x

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.

CALCULATION OF REGISTRATION FEE

| Title of each class of securities to be registered | Amount to be registered (1) | Proposed maximum offering price per share (2) | Proposed maximum aggregate offering price (2) | Amount of registration fee |
|----------------------------------------------------|-----------------------------|-----------------------------------------------|-----------------------------------------------|----------------------------|
| Common Stock, \$.001 par value per share | 27,459,898 shares | \$0.90 | \$24,713,908 | \$2,489(3) |

(1) In addition, pursuant to Rule 416 under the Securities Act of 1933, this Registration Statement includes an indeterminate number of additional shares as may be issuable as a result of stock splits or stock dividends which occur during this continuous offering.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933.

(3) Previously paid.

Table of Contents

THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. THESE SECURITIES MAY NOT BE SOLD UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND WE ARE NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

SUBJECT TO COMPLETION, DATED JULY 15, 2016

PROSPECTUS

27,459,898 Shares

Mobivity Holdings Corp.

Common Stock

This prospectus relates to shares of common stock of Mobivity Holdings Corp. that may be offered for sale for the account of the selling stockholders identified in this prospectus. The selling stockholders may offer and sell from time to time up to 27,459,898 shares of our common stock, which amount includes 8,551,168 shares to be issued to the selling stockholders only if and when they exercise warrants held by them.

The shares owned by the selling stockholders may be sold in the over-the-counter market, or otherwise, at prices and terms then prevailing or at prices related to the then-current market price, or in negotiated transactions. Although we will incur expenses in connection with the registration of the common stock, we will not receive any of the proceeds from the sale of the shares of common stock by the selling stockholders. We will receive gross proceeds of up to \$10,217,433 from the exercise of the warrants, if and when they are exercised.

Our common stock is quoted on the OTC Markets under the symbol "MFON". The last reported sale price of our common stock as reported by the OTC Markets on July 14, 2016 was \$0.84 per share.

We may amend or supplement this prospectus from time to time by filing amendments or supplements as required. You should read this entire prospectus and any amendments or supplements carefully before you make your investment decision.

The Shares of common stock offered under this prospectus involve a high degree of risk. See "Risk Factors" beginning at page 3.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2016

Table of Contents

TABLE OF CONTENTS

| | Page |
|----------------------------------------------------------------------------------------------|-----------|
| <u>SUMMARY</u> | <u>2</u> |
| <u>RISK FACTORS</u> | <u>3</u> |
| <u>CAUTIONARY STATEMENT CONCERNING FORWARD LOOKING INFORMATION</u> | <u>6</u> |
| <u>OUR COMPANY</u> | <u>7</u> |
| <u>SELLING STOCKHOLDERS</u> | <u>10</u> |
| <u>PLAN OF DISTRIBUTION</u> | <u>12</u> |
| <u>MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS</u> | <u>13</u> |
| <u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u> | <u>15</u> |
| <u>OUR BUSINESS</u> | <u>21</u> |
| <u>MANAGEMENT</u> | <u>28</u> |
| <u>PRINCIPAL STOCKHOLDERS</u> | <u>34</u> |
| <u>DESCRIPTION OF SECURITIES</u> | <u>35</u> |
| <u>LEGAL MATTERS</u> | <u>36</u> |
| <u>EXPERTS</u> | <u>36</u> |
| <u>AVAILABLE INFORMATION</u> | <u>36</u> |

Table of Contents

We have not authorized any person to give you any supplemental information or to make any representations for us. You should not rely upon any information about our company that is not contained in this prospectus. Information contained in this prospectus may become stale. You should not assume that the information contained in this prospectus or any prospectus supplement is accurate as of any date other than their respective dates, regardless of the time of delivery of this prospectus, any prospectus supplement or of any sale of the shares. Our business, financial condition, results of operations and prospects may have changed since those dates. The selling stockholders are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted.

In this prospectus, “Mobivity,” the “company,” “we,” “us,” and “our” refer to Mobivity Holdings Corp., a Nevada corporation and its wholly- owned subsidiary, Mobivity, Inc., a Nevada corporation.

Table of Contents

SUMMARY

You should read this summary in conjunction with the more detailed information and financial statements appearing elsewhere in this prospectus.

Our Company

Mobivity Holdings Corp. (the “Company” or “we”) is in the business of developing and operating proprietary platforms over which brands and enterprises can conduct national and localized, data-driven mobile marketing campaigns. Our proprietary platforms, consisting of software available to phones, tablets PCs, and Point of Sale (POS) systems, allow resellers, brands and enterprises to market their products and services to consumers through text messages sent directly to the consumers’ via mobile phones, mobile smartphone applications, and dynamically printed receipt content. We generate revenue by charging the resellers, brands and enterprises a per-message transactional fee, through fixed or variable software licensing fees, or via advertising fees. Our customers include national franchisers, professional sports teams and associations and other national brands such as the Subway, Sonic, Jamba Juice, Chick-Fil-A, Baskin-Robbins and others.

Our executive offices are located at 55 N. Arizona Place, Suite 310, Chandler, Arizona 85225. Our phone number is (877) 282-7660. Our website address is www.mobivity.com. Information contained in, or accessible through, our website does not constitute part of this prospectus.

The Offering

This offering relates to the offer and sale of our common stock by the selling stockholders identified in this prospectus. The selling stockholders will offer and sell the shares of our common stock at prices related to the then-current market price or in negotiated transactions. Although we have agreed to pay the expenses related to the registration of the shares being offered, we will not receive any proceeds from the sale of the shares by the selling stockholders.

Summary Financial Information

The following summary financial data for the fiscal years ended December 31, 2015 and 2014 is derived from our audited consolidated financial statements included elsewhere in this prospectus. The summary financial data as of and for the three months ended March 31, 2016 has been derived from our unaudited financial statements and the related notes thereto included elsewhere in this prospectus. This information is only a summary and does not provide all of the information contained in our financial statements and related notes. You should read “Management’s Discussion and Analysis of Financial Condition and Results of Operations” beginning on page 16 of this prospectus and our financial statements and related notes included elsewhere in this prospectus.

Statement of Operations Data:

| Fiscal Year Ended December 31, | | Three Months Ended March 31, 2016 (Unaudited) |
|-----------------------------------|------|--------------------------------------------------------------|
| 2014 | 2015 | |

Edgar Filing: MOBIVITY HOLDINGS CORP. - Form S-1/A

| | | | |
|-----------|--------------|-------------|-------------|
| Net sales | \$4,000,202 | \$4,618,988 | \$1,845,240 |
| Net loss | \$10,440,764 | \$6,133,046 | \$1,288,989 |

Balance Sheet Data:

| | Fiscal Year Ended December 31, | | March 31, |
|----------------------|-----------------------------------|-------------|---------------------|
| | 2014 | 2015 | 2016 (Unaudited) |
| Total assets | \$5,368,510 | \$5,933,613 | \$8,577,416 |
| Total liabilities | \$1,704,890 | \$1,059,446 | 2,034,748 |
| Stockholders' equity | \$3,663,620 | \$4,874,167 | 6,542,668 |

Table of Contents

RISK FACTORS

You should carefully consider the following risk factors before investing in our common stock. Our business and results of operations could be seriously harmed by any of the following risks. The trading price of our common stock could decline due to any of these risks, and you may lose part or all of your investment.

Risks Relating to Our Business

We may need additional financing to execute our business plan and fund operations, which additional financing may not be available on reasonable terms or at all. As of March 31, 2016, we had working capital of \$1,317,247. In March 2016, we entered into a working capital line of credit facility with our bank to provide up to \$2 million. While we believe that our working capital on hand, including our expected borrowing capacity under our working capital line, will be sufficient to fund our 12 month plan of operations, there can be no assurance that we will not require significant additional capital within 12 months. Also, we expect that we may require additional capital beyond the next 12 months unless we are able to achieve and maintain a profitable operation. In the event we require additional capital we will endeavor to raise additional funds through various financing sources, including the sale of our equity and debt securities and the procurement of commercial debt financing. However, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If such financing is not available on satisfactory terms, we may be unable to expand or continue our business as desired and operating results may be adversely affected. Any debt financing will increase expenses and must be repaid regardless of operating results and may involve restrictions limiting our operating flexibility. If we issue equity securities to raise additional funds, the percentage ownership of our existing stockholders will be reduced and our stockholders may experience additional dilution in net book value per share.

Our ability to obtain needed financing may be impaired by such factors as the capital markets, both generally and specifically in our industry, and the fact that we are not yet profitable, which could impact the availability or cost of future financings. If the amount of capital we are able to raise from financing activities, together with our revenues from operations, is not sufficient to satisfy our capital needs, we may be required to reduce or even cease operations.

Our sales efforts to large enterprises require significant time and effort and could hinder our ability to expand our customer base and increase revenue. Attracting new customers to our large enterprise division requires substantial time and expense, especially in an industry that is so heavily dependent on personal relationships with executives. We cannot assure that we will be successful in establishing new relationships, or maintaining or advancing our current relationships. For example, it may be difficult to identify, engage and market to customers who do not currently perform mobile marketing or advertising or are unfamiliar with our current services or platform. Further, many of our customers typically require input from one or more internal levels of approval. As a result, during our sales effort, we must identify multiple people involved in the purchasing decision and devote a sufficient amount of time to presenting our products and services to those individuals. The complexity of our services often requires us to spend substantial time and effort assisting potential customers in evaluating our products and services including providing demonstrations and benchmarking against other available technologies. We expect that our sales process will become less burdensome as our products and services become more widely known and used. However, if this change does not occur, we will not be able to expand our sales effort as quickly as anticipated and our sales will be adversely affected.

We may not be able to enhance our mobile marketing and advertising platform to keep pace with technological and market developments, or to remain competitive against potential new entrants in our markets. The market for mobile marketing and advertising services is emerging and is characterized by rapid technological change, evolving industry standards, frequent new product introductions and short product life cycles. Our current platform and services may not in the future be acceptable to marketers and advertisers. To keep pace with technological developments, satisfy increasing customer requirements and achieve acceptance of our marketing and advertising campaigns, we will need

to enhance our current mobile marketing solutions and continue to develop and introduce on a timely basis new, innovative mobile marketing services offering compatibility, enhanced features and functionality on a timely basis at competitive prices. Our inability, for technological or other reasons, to enhance, develop, introduce and deliver compelling mobile marketing services in a timely manner, or at all, in response to changing market conditions, technologies or customer expectations could have a material adverse effect on our operating results or could result in our mobile marketing services platform becoming obsolete. Our ability to compete successfully will depend in large measure on our ability to maintain a technically skilled development and engineering staff and to adapt to technological changes and advances in the industry, including providing for the continued compatibility of our mobile marketing services platform with evolving industry standards and protocols. In addition, as we believe the mobile marketing market is likely to grow substantially, other companies which are larger and have significantly more capital to invest than us may emerge as competitors. New entrants could seek to gain market share by introducing new technology or reducing pricing. This may make it more difficult for us to sell our products and services, and could result in increased pricing pressure, reduced profit margins, increased sales and marketing expenses or the loss of market share or expected market share, any of which may significantly harm our business, operating results and financial condition.

Our services are provided on mobile communications networks that are owned and operated by third parties who we do not control and the failure of any of these networks would adversely affect our ability to deliver our services to our customers. Our mobile marketing and advertising platform is dependent on the reliability of mobile operators who maintain sophisticated and complex mobile networks. Such mobile networks have historically, and particularly in recent years, been subject to both rapid growth and technological change. If the network of a mobile operator with which we are integrated should fail, including because of new technology incompatibility, the degradation of network performance under the strain of too many mobile consumers using it, or a general failure from natural disaster or political or regulatory shut-down, we will not be able provide our services to our customers through such mobile network. This in turn, would impair our reputation and business, potentially resulting in a material, adverse effect on our financial results.

If our mobile marketing and advertising services platform does not scale as anticipated, our business will be harmed. We must be able to continue to scale to support potential ongoing substantial increases in the number of users in our actual commercial environment, and maintain a stable service infrastructure and reliable service delivery for our mobile marketing and advertising campaigns. In addition, we must continue to expand our service infrastructure to handle growth in customers and usage. If our mobile marketing services platform does not efficiently and effectively scale to support and manage a substantial increase in the number of users while maintaining a high level of performance, the quality of our services could decline and our business will be seriously harmed. In addition, if we are unable to secure data center space with appropriate power, cooling and bandwidth capacity, we may not be able to efficiently and effectively scale our business to manage the addition of new customers and overall mobile marketing campaigns.

Table of Contents

The success of our business depends, in part, on wireless carriers continuing to accept our customers' messages for delivery to their subscriber base. We depend on wireless carriers to deliver our customers' messages to their subscriber base. Wireless carriers often impose standards of conduct or practice that significantly exceed current legal requirements and potentially classify our messages as "spam," even where we do not agree with that conclusion. In addition, the wireless carriers use technical and other measures to attempt to block non-compliant senders from transmitting messages to their customers; for example, wireless carriers block short codes or Internet Protocol addresses associated with those senders. There can be no guarantee that we, or short codes registered to us, will not be blocked or blacklisted or that we will be able to successfully remove ourselves from those lists. Although our services typically require customers to opt-in to a campaign, minimizing the risk that our customers' messages will be characterized as spam, blocking of this type could interfere with our ability to market products and services of our customers and communicate with end users and could undermine the effectiveness of our customers' marketing campaigns. To date we have not experienced any material blocking of our messages by wireless carriers, but any such blocking could have an adverse effect on our business and results of operations.

We depend on third party providers for a reliable Internet infrastructure and the failure of these third parties, or the Internet in general, for any reason would significantly impair our ability to conduct our business. We outsource all of our data center facility management to third parties who host the actual servers and provide power and security in multiple data centers in each geographic location. These third party facilities require uninterrupted access to the Internet. If the operation of our servers is interrupted for any reason, including natural disaster, financial insolvency of a third party provider, or malicious electronic intrusion into the data center, our business would be significantly damaged. As has occurred with many Internet-based businesses, on occasion in the past, we have been subject to "denial-of-service" attacks in which unknown individuals bombarded our computer servers with requests for data, thereby degrading the servers' performance. While we have historically been successful in relatively quickly identifying and neutralizing these attacks, we cannot be certain that we will be able to do so in the future. If either a third party facility failed, or our ability to access the Internet was interfered with because of the failure of Internet equipment in general or we become subject to malicious attacks of computer intruders, our business and operating results will be materially adversely affected.

Failure to adequately manage our growth may seriously harm our business. We operate in an emerging technology market and have experienced, and may continue to experience, significant growth in our business. If we do not effectively manage our growth, the quality of our products and services may suffer, which could negatively affect our brand and operating results. Our growth has placed, and is expected to continue to place, a significant strain on our managerial, administrative, operational and financial resources and our infrastructure. Our future success will depend, in part, upon the ability of our senior management to manage growth effectively. This will require us to, among other things:

- implement additional management information systems;
- develop additional levels of management within our company;
- locate additional office space in various countries; and
- maintain close coordination among our engineering, operations, legal, finance, sales and marketing and customer service and support organizations.

Moreover, as our sales increase, we may be required to concurrently deploy our services infrastructure at multiple additional locations or provide increased levels of customization. As a result, we may lack the resources to deploy our mobile marketing services on a timely and cost-effective basis. Failure to accomplish any of these requirements would seriously harm our ability to deliver our mobile marketing services platform in a timely fashion, fulfill existing

customer commitments or attract and retain new customers.

The gathering, transmission, storage and sharing or use of personal information could give rise to liabilities or additional costs of operation as a result of governmental regulation, legal requirements, civil actions or differing views of personal privacy rights. We transmit and store a large volume of personal information in the course of providing our services. Federal, state and international laws and regulations govern the collection, use, retention, sharing and security of data that we receive from our customers and their users. Any failure, or perceived failure, by us to comply with U.S. federal, state, or international privacy or consumer protection-related laws, regulations or industry self-regulatory principles could result in proceedings or actions against us by governmental entities or others, which could potentially have an adverse effect on our business, operating results and financial condition. Additionally, we may also be contractually liable to indemnify and hold harmless our customers from the costs or consequences of inadvertent or unauthorized disclosure of their customers' personal data which we store or handle as part of providing our services.

The interpretation and application of privacy, data protection and data retention laws and regulations are currently unsettled in the U.S. and internationally, particularly with regard to location-based services, use of customer data to target advertisements and communication with consumers via mobile devices. Such laws may be interpreted and applied inconsistently from country to country and inconsistently with our current data protection policies and practices. Complying with these varying international requirements could cause us to incur substantial costs or require us to change our business practices in a manner adverse to our business, operating results or financial condition.

As privacy and data protection have become more sensitive issues, we may also become exposed to potential liabilities as a result of differing views on the privacy of personal information. These and other privacy concerns, including security breaches, could adversely impact our business, operating results and financial condition.

In the U.S., we have voluntarily agreed to comply with wireless carrier technological and other requirements for access to their customers' mobile devices, and also trade association guidelines and codes of conduct addressing the provision of location-based services, delivery of promotional content to mobile devices and tracking of users or devices for the purpose of delivering targeted advertising. We could be adversely affected by changes to these requirements, guidelines and codes, including in ways that are inconsistent with our practices or in conflict with the rules or guidelines in other jurisdictions.

We currently rely on a small concentration of customers to use our products to generate our revenues, and the loss or change in any of these significant relationships could materially reduce our revenues. During the years ended December 31, 2015 and 2014, one customer accounted for 31% and 29% of our revenues, respectively. During the three months ended March 31, 2016 and 2015, one customer accounted for 46% and 36% of our revenues, respectively. If we were to lose significant customers before we are able to secure sales from other customers, our income and financial condition would be adversely affected. Although we believe we have good relationships with our customers, should these customers choose to terminate their contracts with us or if material events occur that are detrimental to these customers or their operations, it could have a significant negative impact on our financial performance.

Table of Contents

Risks Related to our Common Stock

There has been a limited trading market for our common stock. There has been a limited trading market for our common stock on the Over-the-Counter Bulletin Board. The lack of an active market may impair the ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair market value of your shares. An inactive market may also impair our ability to raise capital by selling shares of capital stock and may impair our ability to acquire other companies or technologies by using common stock as consideration.

The market price of our common stock may be, and is likely to continue to be, highly volatile and subject to wide fluctuations. The market price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including:

- dilution caused by our issuance of additional shares of common stock and other forms of equity securities, which we expect to make in connection with future acquisitions or capital financings to fund our operations and growth, to attract and retain valuable personnel and in connection with future strategic partnerships with other companies;
- announcements of new acquisitions or other business initiatives by our competitors;
- our ability to take advantage of new acquisitions or other business initiatives;
- quarterly variations in our revenues and operating expenses;
- changes in the valuation of similarly situated companies, both in our industry and in other industries;
- changes in analysts' estimates affecting us, our competitors and/or our industry;
- changes in the accounting methods used in or otherwise affecting our industry;
- additions and departures of key personnel;
- announcements by relevant governments pertaining to additional quota restrictions; and
- fluctuations in interest rates and the availability of capital in the capital markets.

Some of these factors are beyond our control, and the impact of these risks, singly or in the aggregate, may result in material adverse changes to the market price of our common stock and/or our results of operations and financial condition.

We do not expect to pay dividends in the foreseeable future. We do not intend to declare dividends for the foreseeable future, as we anticipate that we will reinvest any future earnings in the development and growth of our business. Therefore, investors will not receive any funds unless they sell their common stock, and stockholders may be unable to sell their shares on favorable terms or at all. Investors cannot be assured of a positive return on investment or that they will not lose the entire amount of their investment in the common stock.

Our common stock may be considered to be a "penny stock" and, as such, any the market for our common stock may be further limited by certain SEC rules applicable to penny stocks. To the extent the price of our common stock remains below \$5.00 per share or we have net tangible assets of \$2,000,000 or less, our common shares will be subject to certain "penny stock" rules promulgated by the SEC. Those rules impose certain sales practice requirements on brokers

who sell penny stock to persons other than established customers and accredited investors (generally institutions with assets in excess of \$5,000,000 or individuals with net worth in excess of \$1,000,000). For transactions covered by the penny stock rules, the broker must make a special suitability determination for the purchaser and receive the purchaser's written consent to the transaction prior to the sale. Furthermore, the penny stock rules generally require, among other things, that brokers engaged in secondary trading of penny stocks provide customers with written disclosure documents, monthly statements of the market value of penny stocks, disclosure of the bid and asked prices and disclosure of the compensation to the brokerage firm and disclosure of the sales person working for the brokerage firm. These rules and regulations adversely affect the ability of brokers to sell our common shares and limit the liquidity of our securities.

We are a "smaller reporting company" and, as such are allowed to provide less disclosure than larger public companies. We are currently a "smaller reporting company," meaning that we are not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company and have a public float of less than \$75 million and annual revenues of less than \$50 million during the most recently completed fiscal year. As a "smaller reporting company", we are able to provide simplified executive compensation disclosures in our SEC filings, are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal control over financial reporting, and have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports. Decreased disclosures in our SEC filings due to our status as a "smaller reporting company" may make it harder for investors to analyze our results of operations and financial prospects.

The offering of up to 27,459,898 shares of our common stock by selling stockholders could depress our common stock price. Certain of our stockholders are offering pursuant to this prospectus up to 27,459,898 shares of our common stock in a secondary offering, which amount includes 8,551,168 shares of common stock issuable upon exercise of outstanding warrants. Sales of a substantial number of shares of our common stock in the public market could adversely affect the market for our common shares and make it more difficult for us to sell equity securities at times and prices that we determine to be appropriate. None of our shareholders are subject to any lock-up or other agreement that contractually restricts their ability to publicly resell their common shares.

Table of Contents

CAUTIONARY STATEMENT CONCERNING FORWARD LOOKING INFORMATION

This prospectus and the documents to which we refer you contain forward-looking statements. In addition, from time to time, we or our representatives may make forward-looking statements orally or in writing. We base these forward-looking statements on our expectations and projections about future events, which we derive from the information currently available to us. Such forward-looking statements relate to future events or our future performance. You can identify forward-looking statements by those that are not historical in nature, particularly those that use terminology such as “may,” “will,” “should,” “expects,” “anticipates,” “contemplates,” “estimates,” “believes,” “projected,” “predicts,” “potential” or “continue” or the negative of these or similar terms. In evaluating these forward-looking statements, you should consider various factors, including those described in this prospectus under the heading “Risk Factors” beginning on page 2. These and other factors may cause our actual results to differ materially from any forward-looking statement. Forward-looking statements are only predictions. The forward-looking events discussed in this prospectus, the documents to which we refer you and other statements made from time to time by us or our representatives, may not occur, and actual events and results may differ materially and are subject to risks, uncertainties and assumptions about us.

Table of Contents

OUR COMPANY

We were incorporated in the State of Nevada on September 25, 2008 under the names Ares Ventures Corporation for purposes of engaging in the acquisition, exploration and development of natural resource properties. From our organization and until November 2010, we were an exploration stage company with no revenues and a limited operating history.

Acquisitions

On November 2, 2010, we completed the acquisition of Mobivity, Inc., a Nevada corporation engaged in the business of mobile marketing, which at the time was known as CommerceTel, Inc., in exchange for 1,666,667 shares of our common stock. In anticipation of the transaction, on October 5, 2010, we changed our name from Ares Ventures Corporation to CommerceTel Corporation. Upon our acquisition of Mobivity, Inc., we ceased all operations related to the acquisition, exploration and development of natural resource properties and since that time have engaged exclusively in our current business, the development and operation of proprietary platforms over which brands and enterprises can conduct mobile marketing campaigns.

In April 2011, we acquired substantially all of the assets of the Txtstation interactive mobile marketing platform and services business from Adsparg Limited. The purchase price for the acquisition was 354,167 shares of our common stock and \$300,000 in cash, which was paid over an 11 month period.

In April 2011, we entered into an acquisition agreement with Mobivity, LLC and Mobile Visions, Inc. pursuant to which we acquired the assets of their Mobivity interactive mobile marketing platform and services business. The purchase price for the acquisition was 166,667 shares of our common stock, \$6