

COMTECH TELECOMMUNICATIONS CORP /DE/

Form 425

May 11, 2010

Table of Contents

**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**

**May 10, 2010
(May 8, 2010)**

0-7928

**Date of Report
(Date of earliest event reported)**

Commission File Number

(Exact name of registrant as specified in its charter)

Delaware

11-2139466

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer Identification Number)

**68 South Service Road, Suite 230
Melville, New York 11747**

(Address of Principal Executive Offices) (Zip Code)

(631) 962-7000

(Registrant's telephone number, including area code)

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))
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TABLE OF CONTENTS

Item 1.01. Entry into a Material Definitive Agreement

Item 8.01. Other Events

Item 9.01. Financial Statements and Exhibits

SIGNATURE

INDEX TO EXHIBITS

EX-2.1

EX-10.1

EX-99.1

Table of Contents

Item 1.01. Entry into a Material Definitive Agreement.

On May 8, 2010, Comtech Telecommunications Corp., a Delaware corporation (the Company), CPI International, Inc., a Delaware corporation (CPI) and Angels Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of the Company (Merger Sub), entered into an Agreement and Plan of Merger (the Merger Agreement). Pursuant to the Merger Agreement, Merger Sub will merge with and into CPI (the Merger), with CPI surviving as a wholly owned subsidiary of the Company.

As a result of the Merger, each share of CPI common stock will be converted at the closing into the right to receive \$9.00 in cash and a fraction of a share of the Company's common stock equal to \$8.10 divided by the average closing price of the Company's shares over a specified period prior to closing, provided that the fraction shall not be greater than 0.2382 nor less than 0.2132.

Except with respect to certain CPI executives with whom separate agreements may be made after the date hereof, (i) immediately prior to the closing, unvested options to purchase CPI common stock will become fully vested, and (ii) holders of unexercised CPI stock options outstanding immediately prior to the closing will be entitled to receive a cash payment in an amount equal to the product of (x) the number of CPI shares subject to the option and (y) the excess, if any, of (A) \$9.00 in cash plus a cash amount equal to the product of the number of shares of Company common stock issuable in respect of each share of CPI common stock in the Merger multiplied by the average price of the Company's shares over a specified period prior to closing over (B) the exercise price per share subject to the option, less any applicable taxes. Except with respect to certain CPI executives with whom separate agreements may be made after the date hereof, each share of CPI restricted stock and each CPI restricted stock unit outstanding immediately prior to the closing will vest in full and, as of the Effective Time, entitle the holder to receive \$9.00 in cash plus a cash amount equal to the product of the number of shares of Company common stock issuable in respect of each share of CPI common stock in the Merger multiplied by the average price of the Company's shares over a specified period prior to closing, less applicable taxes.

The parties have made customary representations, warranties and covenants in the Merger Agreement, including (i) the agreement of the Company and CPI, subject to certain exceptions, to conduct their respective businesses in the ordinary course and not to engage in certain activities between the execution of the Merger Agreement and the consummation of the Merger and (ii) the agreement of CPI to not solicit or knowingly encourage alternative transactions or, subject to certain exceptions, enter into discussions concerning, or provide information in connection with, alternative transactions.

The completion of the Merger is subject to certain conditions, including, among others, (i) the adoption of the Merger Agreement by CPI's stockholders, (ii) the absence of certain legal impediments to the consummation of the Merger, (iii) the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and certain approvals under foreign anti-competition laws, (iv) subject to certain materiality exceptions, the accuracy of the representations and warranties made by the Company and CPI, respectively, and (v) compliance by the Company and CPI with their respective obligations under the Merger Agreement.

The Merger Agreement contains typical mutual termination rights, including termination by mutual agreement of the parties, for any final and nonappealable order or law enjoining or prohibiting or making illegal the Merger or for failure to obtain CPI stockholder approval. In addition, either party may terminate the Merger Agreement if the Merger is not consummated by December 1, 2010, provided that such date may be extended an additional 45 days if the Merger has not closed due to regulatory delays. In addition, the Merger Agreement may be terminated by the Company in the event that the CPI Board changes its recommendation. CPI may terminate the Merger Agreement in order to enter into a Superior Acquisition Proposal (as defined in the Merger Agreement).

CPI has agreed to pay a termination fee upon termination of the Merger Agreement if, among other things, (i) the Company terminates the Merger Agreement due to a recommendation change by CPI's Board, (ii) either party terminates the Merger Agreement because of the failure to obtain stockholder approval and before termination, the CPI Board changes its recommendation, or (iii) CPI terminates the Merger Agreement to enter into a Superior Acquisition Proposal. If the Merger Agreement is terminated in connection with a Superior Acquisition Proposal, then the termination fee payable by CPI is \$12 million. A termination by the Company following a change of

recommendation resulting from certain events or developments unknown or not understood as of the date of the Merger Agreement results in a termination fee of \$15 million.

The foregoing description of the Merger Agreement is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is filed as Exhibit 2.1 to this Current Report on Form 8-K, and is incorporated herein by this reference.

On the same day as the Merger Agreement, the Company and certain stockholders of CPI affiliated with The Cypress Group (the Stockholders) entered into a Voting and Standstill Agreement (the Voting Agreement) pursuant to which the Stockholders have agreed to vote

Table of Contents

49.9% of the shares of CPI's common stock in favor of the Merger, provided, however, that if CPI's Board changes its recommendation in connection with a Superior Acquisition Proposal, the Stockholders are only obligated to vote 25% of the outstanding shares of CPI's common stock in favor of the Merger and the remaining shares may be voted at the discretion of the Stockholders. If CPI's Board changes its recommendation for any reason other than in connection with a Superior Acquisition Proposal, the Stockholders are obligated to vote 49.9% of the outstanding shares of CPI's common stock in favor of the Merger unless at the time of the recommendation change the trailing 5-day average closing per share price of the Company's common stock is less than \$24.00, in which case the Stockholders are only obligated to vote 25% of the outstanding shares of CPI's common stock in favor of the Merger.

In addition, the Voting Agreement includes restrictions both on the ability of the Stockholders to transfer their shares of CPI's common stock before the Merger and on the ability to transfer shares of the Company's common stock after the Merger.

The Voting Agreement terminates upon the earliest of (i) the mutual agreement of the parties, (ii) the termination of the Merger Agreement or (iii) the second anniversary of the Merger.

The foregoing description of the Voting Agreement is qualified in its entirety by reference to the full text of the Voting Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K, and is incorporated herein by this reference.

The Merger Agreement and Voting Agreement incorporated by reference as an exhibit to this Form 8-K contain representations and warranties by each of the parties to the Merger Agreement and the Voting Agreement. These representations and warranties were made solely for the benefit of the other parties to such agreements and (i) were not intended to be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate; (ii) may have been qualified in such agreement by disclosures that were made to the other party in connection with the negotiation of the applicable agreement; (iii) may apply contract standards of materiality that are different from materiality under the applicable securities laws; and (iv) were made only as of the date of such agreement or such other date or dates as may be specified in such agreement.

The Company acknowledges that, notwithstanding the inclusion of the foregoing cautionary statements, it is responsible for considering whether additional specific disclosures of material information regarding material contractual provisions are required to make the statements in this Form 8-K not misleading.

Item 8.01. Other Events.

On May 10, 2010, the Company and CPI issued a joint press release announcing the execution of the Merger Agreement, a copy of which press release is filed as Exhibit 99.1 to this Current Report on Form 8-K, and is incorporated herein by this reference.

Additional Information about the Transaction and Where to Find It

This communication shall not constitute an offer of any securities for sale. The acquisition will be submitted to CPI's stockholders for their consideration. In connection with the acquisition, the Company and CPI intend to file relevant materials with the SEC, including the registration statement, the proxy statement/prospectus and other relevant documents concerning the Merger. Investors and stockholders of the Company and CPI are urged to read the registration statement, the proxy statement/prospectus and other relevant documents filed with the SEC when they become available, as well as any amendments or supplements to the documents because they will contain important information about the Company, CPI and the Merger.

The registration statement, the proxy statement/prospectus and any other relevant materials (when they become available), and any other documents filed by the Company and CPI with the SEC, may be obtained free of charge at the SEC's web site at www.sec.gov. In addition, investors and

Table of Contents

stockholders may obtain free copies of the documents filed with the SEC by directing a written request to: Comtech Telecommunications Corp., 68 South Service Road, Suite 230, Melville, New York 11747, Attention: Investor Relations, or CPI International, Inc., 811 Hansen Way, Palo Alto, California 94303, Attention: Investor Relations. Investors and stockholders are urged to read the registration statement, the proxy statement/prospectus and the other relevant materials when they become available before making any voting or investment decision with respect to the Merger.

Participants in Solicitations

The Company, CPI and their respective directors, executive officers and other members of their management and employees may be deemed to be participants in the solicitation of proxies from stockholders of CPI in connection with the Merger. Information regarding the Company's directors and officers is available in the Company's proxy statement on Schedule 14A for its 2009 annual meeting of stockholders, which was filed with the SEC on November 9, 2009. Information regarding CPI's directors and executive officers is available in CPI's proxy statement on Schedule 14A for its 2010 annual meeting of stockholders, which was filed with the SEC on January 20, 2010. Additional information regarding the interests of such potential participants will be included in the proxy statement and the other relevant documents filed with the SEC when they become available.

Cautionary Statement Regarding Forward-Looking Statements

Certain information in this current report contains forward-looking statements, including but not limited to, information relating to the Company's future performance and financial condition, plans and objectives of the Company's management and the Company's assumptions regarding such future performance, financial condition, plans and objectives that involve certain significant known and unknown risks and uncertainties and other factors not under the Company's control which may cause actual results, future performance and financial condition, and achievement of plans and objectives of the Company's management to be materially different from the results, performance or other expectations implied by these forward-looking statements. These factors include: the risk that the acquisition of CPI may not be consummated for reasons including that the conditions precedent to the completion of the acquisition may not be satisfied; the possibility that the expected synergies from the proposed merger will not be realized, or will not be realized within the anticipated time period; the risk that the Company's and CPI's businesses will not be integrated successfully; the possibility of disruption from the merger making it more difficult to maintain business and operational relationships; any actions taken by either of the companies, including but not limited to, restructuring or strategic initiatives (including capital investments or asset acquisitions or dispositions); the timing of receipt of, and the Company's performance on, new orders that can cause significant fluctuations in net sales and operating results; the timing and funding of government contracts; adjustments to gross profits on long-term contracts; risks associated with international sales, rapid technological change, evolving industry standards, frequent new product announcements and enhancements, changing customer demands, and changes in prevailing economic and political conditions; risks associated with the results of ongoing investigations into the Company's compliance with export regulations; risks associated with the Company's legal proceedings and other matters; risks associated with the Company's MTS and BFT contracts; risks associated with the Company's obligations under its revolving credit facility; and other factors described in the Company's and CPI's filings with the Securities and Exchange Commission.

Table of Contents

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed herewith:

Exhibit Number	Description
2.1	Agreement and Plan of Merger by and among Comtech Telecommunications Corp., Angels Acquisition Corp. and CPI International, Inc.
10.1	Voting and Standstill Agreement by and among Comtech Telecommunications Corp. and the Stockholders named therein
99.1	Joint press release, dated May 10, 2010, announcing entry into the Agreement and Plan of Merger by and among Comtech Telecommunications Corp., Angels Acquisition Corp. and CPI International, Inc.

Table of Contents

SIGNATURE

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

COMTECH TELECOMMUNICATIONS CORP.

Dated: May 10, 2010

By: /s/ Michael D. Porcelain
Name: Michael D. Porcelain
Title: Senior Vice President
and Chief Financial Officer

Table of Contents

INDEX TO EXHIBITS

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