

GLU MOBILE INC
Form S-3/A
September 27, 2013

As filed with the Securities and Exchange Commission on September 27, 2013

Registration No. 333-190545

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

AMENDMENT No. 1
TO
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

GLU MOBILE INC.

(Exact name of Registrant as specified in its charter)

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Delaware
(State or other jurisdiction of
incorporation or organization)

91-2143667
(I.R.S. Employer
Identification No.)

45 Fremont Street, Suite 2800
San Francisco, California 94105
(415) 800-6100

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

Niccolo M. de Masi
President, Chief Executive Officer and Director
Glu Mobile Inc.

45 Fremont Street, Suite 2800
San Francisco, California 94105
(415) 800-6100

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

Copies to:

Scott J. Leichtner, Esq.
Vice President and General Counsel
Glu Mobile Inc.
45 Fremont Street, Suite 2800
San Francisco, California 94105

David A. Bell, Esq.
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, California 94041

Approximate date of commencement of proposed sale to the public: From time to time after this registration statement becomes effective.

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If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

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, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) 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.

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.

If this form is a registration statement filed pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act (Check one):

Large Accelerated Filer Accelerated Filer

Non-Accelerated Filer (Do not check if a smaller reporting company) Smaller Reporting Company

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 Securities and Exchange Commission, acting pursuant to Section 8(a), may determine.

Explanatory Note

The Registrant is filing this Amendment No. 1 solely to include the undertaking required by Rule 430C of the Securities Act of 1933, as amended, which was previously omitted from Part II, Item 17 of the Registration Statement on Form S-1 (333-190545) (the Registration Statement). No other changes have been made to Part I or Part II of the Registration Statement.

PART II**INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth the estimated costs and expenses that are payable by the Registrant in connection with the offering of the securities being registered. All amounts shown are estimates, except for the SEC registration fee.

SEC registration fee	\$ 1,110
Legal fees and expenses	5,000
Accounting fees and expenses	5,000
Printing and related expenses	5,000
Miscellaneous	500
 Total	 \$ 16,610

Item 15. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the Delaware General Corporation Law are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the Delaware General Corporation Law, the Registrant's restated certificate of incorporation contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

any breach of the director's duty of loyalty to the Registrant or its stockholders;

acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

under Section 174 of the Delaware General Corporation Law (regarding unlawful dividends and stock purchases); or

any transaction from which the director derived an improper personal benefit.

As permitted by the Delaware General Corporation Law, the Registrant's amended and restated bylaws provide that:

the Registrant is required to indemnify its directors and executive officers to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions;

the Registrant may indemnify its other employees and agents as set forth in the Delaware General Corporation Law;

the Registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the Delaware General Corporation Law, subject to very limited exceptions; and

the rights conferred in the bylaws are not exclusive.

The Registrant has entered into indemnity agreements with its directors and executive officers to provide them certain contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. At present, there is no pending litigation or proceeding involving a director or executive officer of the Registrant for which indemnification is sought. The indemnification provisions in the Registrant's restated certificate of incorporation, amended and restated bylaws and the indemnification agreements entered into between the Registrant and its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant currently carries liability insurance for its directors and officers.

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Reference is made to the following documents filed as exhibits with the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as amended, regarding relevant indemnification provisions described above and elsewhere herein:

Exhibit Title	Number
Restated Certificate of Incorporation of Glu Mobile Inc.	3.01
Amended and Restated Bylaws of Glu Mobile Inc.	3.02
Form of Indemnity Agreement entered into between Glu Mobile Inc. and each of its directors and executive officers, effective as of June 15, 2009.	10.01

Item 16. Exhibits and Financial Statement Schedules

The exhibits listed on the Exhibit Index (following the Signatures section of this Registration Statement) are included, or incorporated by reference, in this Registration Statement.

Item 17. Undertakings.

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission (Commission) pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

provided, however, that paragraphs (1)(i), (1)(ii) and (1)(iii) of this section do not apply if the registration statement is on Form S-3 or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) each prospectus filed by the Registrant pursuant to Rule 424(b) as part of a registration statement relating to a offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness; *provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made

in any such document immediately prior to such date of first use.

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(5) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California, on this 27th day of September 2013.

GLU MOBILE INC.

By: /s/ Niccolo M. de Masi
 Niccolo M. de Masi
 President, Chief Executive Officer and Director

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Niccolo M. de Masi	President, Chief Executive Officer and Director	September 27, 2013
Niccolo M. de Masi	(Principal Executive Officer)	
/s/ Eric R. Ludwig	Executive Vice President and Chief Financial Officer	September 27, 2013
Eric R. Ludwig	(Principal Accounting and Financial Officer)	
/s/ William J. Miller*	Chairman of the Board	September 27, 2013
William J. Miller		
/s/ Lorne Abony*	Director	September 27, 2013
Lorne Abony		
	Director	
Ann Mather		
/s/ Hany M. Nada*	Director	September 27, 2013
Hany M. Nada		
/s/ A. Brooke Seawell*	Director	September 27, 2013
A. Brooke Seawell		
/s/ Benjamin T. Smith, IV*	Director	September 27, 2013
Benjamin T. Smith, IV		

*By: /s/ Scott J. Leichtner

Scott J. Leichtner

Attorney-in-Fact

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EXHIBIT INDEX

Exhibit		Incorporated by Reference				Filed
				Filing		
Number	Exhibit Description	Form	File No.	Exhibit	Date	Herewith
4.01	Restated Certificate of Incorporation of the Registrant.	S-1/A	333-139493	3.02	02/14/2007	
4.02	Amended and Restated Bylaws of the Registrant.	8-K	001-33368	99.01	10/28/2008	
4.03	Common Stock Warrant, between Glu Mobile Inc. and MGM Interactive Inc., dated as of July 15, 2013.	S-3	333-190545	4.03	08/09/2013	
4.04	Form of Specimen Certificate for Common Stock.	S-1/A	333-139493	4.01	02/14/2007	
5.01	Opinion of Scott J. Leichtner, General Counsel to Registrant.	S-3	333-190545	5.01	08/09/2013	
23.01	Consent of Scott J. Leichtner (included in Exhibit 5.01).	S-3	333-190545	23.01	08/09/2013	
23.02	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.	S-3	333-190545	23.02	08/09/2013	
24.01	Power of Attorney.	S-3	333-190545	24.01	08/09/2013	