MEDIABAY INC
Form 10-K
April 14, 2004

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

|X| ANNUAL REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934. FOR THE FISCAL YEAR ENDED DECEMBER 31, 2003

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934. FOR THE TRANSITION PERIOD FROM________TO_______

COMMISSION FILE NUMBER 001-13469

MEDIABAY, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

Florida	65-0429858
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(IRS EMPLOYER IDENTIFICATION NO.)
2 Ridgedale Avenue Cedar Knolls, NJ	07927
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	(ZIP CODE)

973-539-9528
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

Securities registered pursuant to Section 12(b) of the Act: None Securities registered pursuant to Section 12(g) of the Act:

Common Stock
(TITLE OF CLASS)

Indicate by check mark whether the Registrant: (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filling requirements for the past 90 days. Yes [ ] No |X|

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained in this form, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

Indicate by check mark whether the Registrant Fis an accelerated filer as defined in Rule 12b-2 of the Securities Exchange Act of 1934. Yes [ ] No |X|

The aggregate market value of the voting and non-voting common equity held by non-affiliates as of June 30, 2003 (the last business day of the Registrant's most recently completed second fiscal quarter) was approximately $6,964,684.

As of April 12, 2004, there were 18,463,624 shares of the Registrant's Common Stock outstanding.

Documents Incorporated by Reference:
None

MEDIABAY, INC.

Form 10-K

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PART I

ITEM 1. BUSINESS

FORWARD-LOOKING STATEMENTS

Certain statements in this Form 10-K and in the documents incorporated by reference in this Form 10-K constitute "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical facts included in this Report, including, without limitation, statements regarding our future financial position, business strategy, budgets, projected costs and plans and objectives of our management for future operations are forward-looking statements. In addition, forward-looking statements generally can be identified by the use of forward-looking terminology such as "may," "will," "expect," "intend," "estimate," "anticipate," "believe," or "continue" or the negative thereof or variations thereon or similar terminology. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we cannot assure you that such expectations will prove to be correct. These forward looking statements involve certain known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any results, performances or achievements expressed or implied by such forward-looking statements. Important factors that could cause actual results to differ materially from our expectations, include, without limitation, our history of losses; our ability to obtain additional financing, meet stock repurchase obligations, anticipate and respond to changing customer preferences, license and produce desirable content, protect our databases and other intellectual property from unauthorized access, pay our trade creditor and collect receivables; dependence on third-party providers, suppliers and distribution channels; competition; the costs and success of our marketing strategies, product returns and member attrition. Undue reference should not be placed on these forward-looking statements, which speak only as of the date hereof. We undertake no obligation to update any forward-looking statements.

INTRODUCTION

MediaBay, Inc. is a media, marketing and publishing company specializing in spoken audio content, whose industry-leading businesses include direct response and interactive marketing, retail product distribution, media publishing and broadcasting. Our operations are comprised of four subsidiaries -- Audio Book Club, Inc. ("ABC"), a leading club for audiobooks, Radio Spirits, Inc. ("RSI" or "Radio Spirits"), a leading seller of classic radio programs, MediaBay.com, Inc. our digital audio download service, and RadioClassics, Inc. ("RCI" or RadioClassics"), a leading distributor of classic radio content across multiple broadcast platforms including Sirius; XM Satellite and traditional broadcast radio. Our content libraries include over 60,000 classic radio programs, 3,500 film and television programs and thousands of audiobooks, much of which are proprietary.

We distribute our products to our customer database of approximately 3.0 million names and 1.0 million e-mail addresses, in over 7,000 retail outlets and on the Internet through streaming and downloadable audio.

Audio Book Club is a membership-based club with exclusive licenses from publishers to distribute audiobooks in a club format. This business is modeled after traditional book-of-the month clubs and its member database has grown from approximately 64,000 in 1995 to approximately 2.5 million as of December 31, 2003, through organic growth and acquisitions. Radio Spirits, which we believe, is the world's largest seller of old-time radio shows, sells on audiocassettes and compact discs through retail, direct mail and online channels. Our radio library consists of thousands of famous old-time radio shows, many of which it licenses exclusively. Products are sold in over 7,000 leading retail outlets, as well as directly to consumers through its catalogue and World's Greatest Old-Time Radio continuity program.

We report financial results on the basis of four reportable segments; corporate, Audio Book Club, Radio Spirits and MediaBay.com. A fifth division, RadioClassics, is aggregated with Radio Spirits for financial reporting purposes. Except for corporate, each segment serves a unique market segment within the spoken word audio industry. Our four divisions serving the spoken word audio industry are as follows:

Audio Book Club

We believe that Audio Book Club, which is modeled after the traditional "Book-of-the-Month Club" format, is the largest membership-based audiobook club. The club's total member file, which includes active and inactive members, has grown significantly from approximately 64,000 names at December 31, 1995 to approximately 2.5 million names at December 31, 2003.

Audio Book Club members can enroll in the club through the mail by responding to direct mail advertisements, and online through the club's web site at www.audiobookclub.com. We have established relationships with substantially all of the major audiobook publishers, including Random House Audio Publishing Group, Simon & Schuster Audio, Harper Audio and Time Warner Audio Books. As a club operator, we license a recording or a group of recordings from the publisher for sale in a club format, frequently on an exclusive basis, on a royalty or per copy basis. We then subcontract the manufacturing, including duplication and printing, to a third party, resulting in lower costs and higher product margins than traditional catalog, Internet or retailer sellers of audiobooks. The Audio Book Club accounted for approximately 72% of revenues in 2003.

Radio Spirits

We believe Radio Spirits is the world's largest seller of old-time radio shows, which it sells on audiocassettes and compact discs through retail, direct mail and online channels. Radio Spirits has a database of names of more than 400,000 catalog customers and prospects and sells its products in over 7,000 retail outlets, including such well-known national chains as Sam's Club, Target, Barnes & Noble, Borders, Cracker Barrel Old Country Stores and online retailers such as Amazon.com. Radio Spirits' products can also be purchased online at www.radiospirits.com. The Radio Spirits content library consists of more than 60,000 classic radio shows licensed on a primarily exclusive basis. Radio Spirits' library of classic radio shows includes episodes from the following notable series: The Shadow, The Jack Benny Program, The Bob Hope Show, Superman, Suspense and many others including famous stars such as Clark Gable, Cary Grant, Humphrey Bogart, Jimmy Stewart, Lucille Ball, Frank Sinatra, Judy Garland, Orson Welles and Bing Crosby. Radio Spirits also offers its old-time radio programs in a continuity format, a marketing program that automatically sends selections to a customer once an initial order is placed. Radio Spirits accounted for approximately 28% of MediaBay's revenue in 2003.

MediaBay.com

MediaBay.com provides the infrastructure and support for all of our web sites including www.audiobookclub.com, www.radiospirits.com, www.RadioClassics.com and www.MediaBayDownloads.com. MediaBay.com powers our digital audio download service located at www.MediaBayDownloads.com which offers many of our classic radio programs for purchase either via a secure digital download subscription service or on a pay per download basis, in either case, with desktop and mobile playback capabilities on iPods and other MP3 players. With the increasing popularity of these portable music players, in particular the iPod, we believe this division is poised for growth.

RadioClassics Division

RadioClassics was created to distribute our proprietary old-time radio content across multiple distribution platforms including traditional radio, cable television, satellite television (DBS), satellite radio and the Internet. RadioClassics currently distributes a national "classic" radio program, "When Radio Was" heard, based on Arbitron data, on more than 235 radio stations by nearly 3 million listeners weekly and can also be heard on dedicated channels on both the Sirius Satellite Radio and XM Satellite Radio services, with combined subscribers in excess of 1.5 million.

STRATEGY

Our strategy consists of the following three-pronged approach: 1) Increase the number of distribution channels of our products; 2) Increase the number of products we distribute through those channels, and 3) Increase the amount of products each customer buys, namely by increasing the "quality" of customer as well as extending the "customer life" through various initiatives (i.e. initiating customer retention strategies). Our ability to implement and execute our strategy is dependent on a number of factors, including our ability to obtain necessary financing. We believe that this strategy, if executed properly, will enable us to utilize the following assets to increase the sales of our existing products as well as develop new products, leveraging our direct marketing and wholesale distribution channels:

- OUR PROPRIETARY LICENSES AND CONTENT- A proprietary content library, consisting of more than 50,000 hours of spoken audio content, the majority of which is acquired under license from the rightsholders.
- OUR CUSTOMER DATABASES- A customer database, which includes approximately 3.0 million, spoken audio buyers who have purchased via our catalogs and/or direct mail marketing, as well as a total database of more than 1.0 million targeted e-mail addresses.
- OUR WHOLESALE DISTRIBUTION SYSTEM- A wholesale distribution system that distributes our old-time radio products in over 7,000 retail locations including Costco, Target, Sam's Club, Barnes & Noble, Borders, Amazon.com, and Cracker Barrel Old Country Stores.
- OUR INTERNET DISTRIBUTION PLATFORM- Web sites, which offer memberships in our Audio Book Club and which sell both our old-time radio shows and audiobooks to Audio book Club members.. Our web sites also serve streams of classic radio content on a monthly basis to web site visitors at radiospirits.com and MediaBay.com.
- OVER 230 STATION SYNDICATED RADIO NETWORK- Direct response advertising time to promote and cross-sell our products and products from third parties.
- OUR DIRECT MARKETING AND PRODUCT DEVELOPMENT KNOWLEDGE AND EXPERIENCE- Over 40 years experience among top management of marketing products directly to consumers as well as developing new product ideas.

Additional Distribution Channels

We are seeking new distribution channels. In addition to current retail outlets, which include Target, Barnes & Noble and Borders, we are attempting to distribute our classic radio products through drug, gift and specialty stores as well as additional specialty catalogs. In addition, we are attempting to distribute our old-time radio products to truck stops, airport kiosks and other stores that specialize in product sales to travelers.

We believe that the emergence of the Internet as an increasingly accepted media distribution channel, as demonstrated by the recent success of the iPod and other audio devices and the continuing growth in consumer demand for content in a variety of formats, has resulted in significant opportunities for us to further use the Internet as a distribution channel. To capitalize on the growing popularity of digital audio players such as MP3 players and iPods, we intend to expand our Internet presence and digital content delivery capabilities.

New Product Lines and Products Under Development
We expect to develop new products internally, through licensing and other arrangements and through strategic acquisitions of direct marketing and consumer goods companies. We have been repackaging our existing old-time radio content and promoting it through celebrity sponsorship. Examples of these products include a collection of baseball players' appearances on old-time radio shows and other old-time radio baseball themed programs to be hosted by Yogi Berra and a comedy collection of old-time radio shows to be hosted by Jackie Mason.

In addition, we recently obtained the exclusive rights to publish, duplicate, distribute and sell selected seminars by the Learning Annex, an adult continuing education school offering classes in areas such as personal improvement, healing, spiritual growth, media, and business. The 10-year agreement gives us the right to sell Learning Annex seminars in all wholesale and retail audio-book channels, while paying the Learning Annex a royalty on each unit sold.

To capitalize on the growing popularity of digital audio players such as MP3 players and iPods, we make a portion of our old-time radio content available for download over the Internet. For $19.95 a month, we offer subscribers the ability to download a selection of our old-time radio programs. We have also introduced a stream-only plan of old-time radio programs for $4.95 a month, and are evaluating product and pricing for delivery using this medium.

Increasing Customer Quality, Customer Satisfaction and "Lifetime" of Customer We employ data mining techniques in order to analyze various segments of our current customer database, as well as every new customer that joins the Audio Book Club. We have the ability to determine not only customer acquisition costs, but also what segments of customers are most profitable, and which customers are actually unprofitable and should be removed from the program. We use these tools to try to be more responsive, and relevant to our customers, impacting how much they purchase, and how long they remain with the Audio Book Club. We are also testing various pricing strategies and offers to determine elasticity of pricing and promotions.

BUSINESS DIVISIONS

Audio Book Club
We believe that Audio Book Club is the largest membership-based audiobook club. Our total member file, which includes active and inactive members, has grown significantly from approximately 64,000 names at December 31, 1995 to approximately 2.5 million names at December 31, 2003.

Our Audio Book Club is modeled after the "Book-of-the-Month Club." Audio Book Club members can enroll in the club through the mail by responding to direct mail advertisements, online through our web site or by calling us. We typically offer new members four audiobooks at an introductory price of $.99 or less. By enrolling, the member typically commits to purchase a minimum number of additional audiobooks, typically one or two, at Audio Book Club's regular prices, which generally range from $10.00 to $40.00 per audiobook. Our members continue to receive member mailings and typically purchase audiobooks beyond their minimum purchase commitment.

We engage in list rental programs to maximize the revenue generation potential of these programs. As Audio Book Club's membership base and Radio Spirits' catalog customer base continue to grow, we anticipate that our customer and member lists will continue to be attractive to non-competitive direct marketers as a source of potential customers.

Marketing

Since our inception, we have engaged in an aggressive marketing program to expand our Audio Book Club member base. We devote significant efforts to developing various marketing strategies in a concerted effort to increase revenue and reduce marketing costs. We continually analyze the results of our marketing activities in an effort to maximize sales, extend membership life cycles, and efficiently target our marketing efforts to increase response rates to our advertisements and reduce our per-member acquisition costs.

We have historically acquired new Audio Book Club members primarily through direct mailings of member solicitation packages, acquisitions, Internet advertising, and to a lesser extent from advertisements in magazines, newspapers and other publications, package insert and telemarketing programs. We seek to attract a financially sound and responsible membership base and target these types of persons in our direct mail, Internet and other advertising efforts. Based on our extensive knowledge and expertise, we select lists of names and mine for membership candidates that exhibit characteristics of persons who are likely to join Audio Book Club, purchase sufficient quantities of audiobooks to be a profitable source of sales and remain long-term members. We analyze our existing mailing lists and our promotional campaigns to target membership lists, which are more likely to yield higher response rates. We have gained substantial knowledge relating to the use of third-party mailing lists and believe we can target potential members efficiently and cost effectively by using third-party mailing lists.

Our Internet marketing program focuses on acquiring Audio Book Club members through advertising agreements with other web sites that require payment only when we enroll a bona fide member in Audio Book Club. This cost-per-acquisition arrangement results in substantially lower marketing costs and direct control over the cost of acquiring members.

Member Retention and Recurring Revenue

We encourage Audio Book Club members to purchase more than their minimum purchase commitment by offering members selected promotions, spot discounts and other incentives based on the volume of their purchases. Audio Book Club members receive one mailing approximately every three weeks. Audio Book Club mailings typically include a multi-page catalog which offers hundreds of titles, including a featured selection (which is usually one of the most popular titles at the time of mailing); alternate selections, which are best selling and other current popular titles; and backlist selections, which are long-standing titles that have continuously sold well.

In order to encourage members to maintain their relationship with Audio Book Club and to maximize the long-term value of members, we seek to provide friendly, efficient, and personalized service. Our goal is to simplify the order process and to make members comfortable shopping via the Internet and by mail order. Audio Book Club's membership club format makes it easy for members to receive the featured selection without having to take any action. Under the membership club reply system, the member receives the featured selection unless he or she replies by the date specified on the order form by returning the order form, calling us with a reply or replying online via our Internet web site with a decision not to receive such selection. Members can also use any of these methods to order additional selections from each catalog.

We maintain a database of information on each name in our member file, including number and genre of titles ordered, payment history and the marketing campaign from which the member joined. We also maintain a lifetime value analysis of each mailing list we use and each promotional campaign we undertake.

Supply and Production

We have established relationships with substantially all of the major audiobook publishers, including Random House Audio Publishing Group, Simon & Schuster Audio, Harper Audio and Time Warner Audio Books for the supply of audiobooks. As a club operator, we license a recording or a group of recordings from the publisher for sale in a club format on a royalty or per copy basis and subcontract the manufacturing, including duplicating and printing to a third party.

Our licensing agreements, many of which are exclusive, have one-to-three-year terms, require us to pay an advance against future royalties upon signing the license, permit us to sell audiobooks in our inventory at the expiration of the term during a sell-off period and prohibit us from selling an audiobook prior to the publisher's release date for each audiobook. Substantially all of the license agreements permit us to make our own arrangements for the packaging, printing and cassette and CD duplication of audiobooks. Substantially all of our license agreements permit us to produce and sell audiobook titles in cassette and compact disc form.

Fulfillment and Customer Service

Bookspan, formerly Doubleday Direct, currently provides order processing and data processing services, warehousing and distribution services for our Audio Book Club members. Bookspan's services include accepting member orders, implementing our credit policies, inventory tracking, billing, invoicing, cash collections and cash application and generating periodic reports, such as reports of sales activity, accounts receivable aging, customer profile and marketing effectiveness. Bookspan also provides us with raw data from which we generate our own marketing and accounting reports using our in-house management information systems department. Bookspan also packs and ships the order, using the invoice as a packing list, to the club member.

Members are billed for their purchases at the time their orders are shipped and are required to make payment promptly. We generally allow members in good standing to order up to fifty dollars of products on credit, which may be increased if the member maintains a good credit history with us. We monitor each member's account to determine if the member has made excessive returns.

Radio Spirits

In December 1998, we completed a series of acquisitions and combined the acquired businesses to form our Radio Spirits and RadioClassics divisions. Radio Spirits and RadioClassics produce, syndicate, sell and license popular "classic" and old-time radio and programs, including vintage comedy, mystery, detective, adventure and suspense programs recorded during the "Golden Age of Radio" typically described as the 1930's through the 1950's.

RSI Content

RSI has exclusive rights to a substantial portion of its library of popular old-time radio and classic video programs, including vintage comedy, mystery, detective, adventure and suspense programs. RSI's library consists of over 60,000 radio programs, most of which are licensed on an exclusive basis, including:

- H.G. Wells' "War of the Worlds" broadcast;
- hit series, such as The Shadow, The Lone Ranger, Superman, Tarzan, Sherlock Holmes, The Life of Riley and Lights Out;
- recordings of stars, such as Bob Hope, Lucille Ball, Frank Sinatra and Jack Benny; and
- recordings of comedy teams, such as Abbott and Costello, Burns and Allen, and Martin and Lewis.

RSI leverages the content of its old-time radio and classic video library by entering into marketing and co-branding arrangements, which provides RSI a means to repackage these programs. RSI offers the following collections, among others:

- "The Greatest Old-Time Radio Shows of the 20th Century - selected by Walter Cronkite" - a collection of Mr. Cronkite's favorite old-time radio programs. RSI has entered into a license agreement to use Mr. Cronkite's name and likeness. This collection includes some of radio's most memorable programs, a spoken foreword by Mr. Cronkite and a companion informational booklet.
- "The Smithsonian Collections" - a collection of old-time radio programs branded under this name. RSI has entered into an agreement with the Smithsonian Institution to produce a series of recordings of nostalgic radio programs to be sold through all major bookstore chains carrying audio programs. Each Smithsonian collection features a foreword by a recognized celebrity from radio's golden age such as George Burns, Jerry Lewis and Ray Bradbury.

Marketing

RSI markets its library of old-time radio and video programs through direct marketing, Internet, and on a wholesale basis through retail channels. RSI's marketing efforts are aimed at the direct marketing channel of distribution, via internally developed catalogs, as well as through retail and online channels of distribution.

Direct Mail

RSI produces several catalogs per year and mails them to its customer list and selected third-party mailing lists three times per year. RSI maintains a total file of over 400,000 names of customers and prospects. This list includes all customers to which RSI's radio and video programs or catalogs have been mailed. RSI engages in list rental programs to maximize the revenue generation potential of its customer list.

Wholesale

RSI has developed wholesale distribution through several large, national book retailers, including Barnes & Noble, Borders, and Waldenbooks; gift stores such as Cracker Barrel Old Country Stores; and mass retailers like Costco, Sam's

Club, and Target, as well as on the Internet at Amazon.com. RSI markets its old-time radio and classic video programs to wholesale customers through its in-house sales personnel, independent sales representatives and through third-party distributors. RSI also engages in cooperative advertising to induce retailers to purchase its products.

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Broadcast
RSI advertises its products on "When Radio Was," our nationally syndicated old-time radio broadcast, which is broadcasted weekly on over 210 radio stations. Our old-time radio shows can also be heard on dedicated channels on both the Sirius Satellite Radio and XM Satellite Radio services.

Internet
RSI sells its old-time radio programs in cassette and compact disc directly to consumers through its web site, radiospirits.com. Radiospirits.com offers visitors the opportunity to listen to free programs in streaming audio while they are prompted to buy our programs. Consumers may also download old-time radio content from the Internet at radiospirits.com. This service enables the secure delivery of old-time radio content over the Internet for playback on personal computers and portable playback devices.

Supply and Production
RSI has exclusive licensing rights to a substantial majority of its old-time radio library. These rights have been principally acquired from the original rightsholders (actors, directors, writers, producers or others) or their estates. Engineers in our New Jersey facility use digital sound equipment to improve the sound quality of RSI's old-time radio programs. RSI then contracts with third-party manufacturers to duplicate and manufacture the old-time radio cassettes and compact discs, which it sells.

Fulfillment and Customer Service
RSI uses a third-party fulfillment center to process and fill orders. RSI only accepts credit card orders or advance payments from consumers and requires wholesale customers to generally pay invoices within 60 to 90 days. RSI maintains a toll-free customer service telephone hotline for these customers and can also be contacted by mail and e-mail. RSI's policy is to accept returns of damaged products sold on a retail basis. RSI accepts returns of unsold products sold on a wholesale basis.

MediaBay.com
MediaBay.com provides the infrastructure and support for all of our web sites including www.audiobookclub.com, www.radiospirits.com and www.mediabaydownloads.com. MediaBay.com powers our digital audio download service located at www.mediabaydownloads.com which offers many of our classic radio programs and audiobooks for purchase either via a secure digital download subscription service or on a pay per download basis, in either case, with desktop and mobile playback capabilities.

RadioClassics
Our RadioClassics subsidiary produces and syndicates a one-hour version of "When Radio Was" which is hosted by Stan Freberg and broadcast five nights each week. In addition we also produce and syndicate a two-hour version of "When Radio Was" which is broadcast one time each week and a one-hour weekend version, which is broadcast once each week. These three programs are broadcast on more than 235 radio stations in the United States. Our library of old-time radio programs provides the content and the basis for these programs.

Our current syndicated radio shows provide an excellent forum to introduce our old-time radio programs to existing and potential new listeners. The syndication agreements also provide us with several minutes per hour for our own advertising and promotional use. We use this advertising and promotional forum as a means to develop broader name recognition for Radio Spirits, to advertise third party products and services and to sell and cross-promote old-time radio and other MediaBay products. Our old-time radio content can also be heard on dedicated channels on both the Sirius Satellite Radio and XM Satellite Radio services.

AUDIOBOOK INDUSTRY

First introduced to the mass market in 1985, audiobooks are literary works or other printed materials read by the author, a celebrity actor, or an ensemble of readers or actors. Audiobooks are recorded primarily on audiocassette and, to a lesser extent, on compact disc. Most best selling hardcover books printed today are released simultaneously as audiobooks. Audiobooks are unabridged or author approved abridgements of the original works converted to an audio. Today there are over 70,000 audiobook titles in existence spanning every genre, including non-fiction, fiction, self-improvement, mystery, fantasy, business, science fiction, biography, romance, religion, motivational and children's, among others. Audiobooks cover new releases as well as many of the literary classics.

COMPETITION

We compete for discretionary consumer spending with other mail order clubs and catalogs and other direct marketers and traditional and on-line retailers that offer products with similar entertainment value as audiobooks and old-time radio programs, such as music on cassettes and compact discs, printed books, videos, and laser and digital video discs. Many of these competitors are well-established companies, which have greater financial resources.

Through consolidation and the exclusivity of the licenses with publishers to sell their audiobooks in a club format, we believe we are largest business, which sells audiobooks in a club format. Furthermore, as was similarly accomplished with the formation of the Radio Spirits and RadioClassics, we believe we are the largest producer, marketer and seller of old-time radio programs. However, the audiobook and mail order industries are intensely competitive. We compete with all other outlets through which audiobooks and other spoken word content are offered, including larger retailers such as Barnes & Noble and Amazon.com.

INTELLECTUAL PROPERTY

We have several United States registered trademarks and service marks for slogans and designs used in our advertisements, member mailings and member solicitation packages, including the Audio Book Club logo "MediaBay," "Radio Spirits", "MediaBay.com," "audiobookclub.com" and the MediaBay logos. We believe that our trademarks and service marks have significant value and are important to our marketing. We also own or license the rights to substantially all of our radio programs in our content library.

We rely on trade secrets and proprietary know-how and employ various methods to protect our ideas, concepts and membership database. In addition, we typically obtain confidentiality agreements with our executive officers, employees, list managers and appropriate consultants and service suppliers.

EMPLOYEES

As of April 12, 2004, we had 37 full-time employees. Of these employees, 4 served in corporate management; 18 served in operational positions at our Audio Book Club operations; 7 served in operational positions at our MediaBay.com and information systems operations and 8 served in operational positions at our old-time radio operations. We believe our employee relations to be good. None of our employees are covered by a collective bargaining agreement.

RISK FACTORS

Risks Relating to Our Financial Condition

We have a history of losses, are not currently profitable, and expect to incur losses in the future. Since our inception, we have incurred significant losses. As of December 31, 2003, we had incurred an accumulated deficit of $102 million. Losses are continuing and are expected to continue. We may not be able to achieve and sustain profitable operations.

Our auditors expressed doubt about our ability to continue as a going concern in their audit report for the fiscal year ended December 31, 2003. Our auditors have included an explanatory paragraph in their audit opinion with respect to our consolidated financial statements at December 31, 2003. The paragraph states that our recurring losses from operations and our inability to meet our debt obligations as they come due in 2004 raise substantial doubt about our ability to continue as a going concern. Furthermore, the factors leading to and the existence of the explanatory paragraph may adversely affect our relationships with suppliers and other creditors and customers and may adversely affect our ability to obtain additional financing.

The terms of our debt impose restrictions on our business.

As of December 31, 2003 we had approximately $2.9 million of debt outstanding under our revolving line of credit and approximately $15.1 million principal amount of debt outstanding and related accrued interest under promissory notes. Our revolving line of credit restricts our ability to raise financing for working capital purposes because it requires us to use any proceeds from equity or debt financings, with limited exceptions, to repay amounts outstanding under the credit agreement. In addition to limiting our ability to incur additional indebtedness, our existing indebtedness under our revolving line of credit limits or prohibits us from, among other things:

- merging into or consolidating with another corporation;
- selling all or substantially all of our assets;
- declaring or paying cash dividends; or
- materially changing the nature of our business.

We have to make substantial payments on our debt during 2004 and may not have the funds to do so. Our line of credit matures on September 30, 2004, an additional $10.8 million is due upon demand of the holders of notes which may be made at various times during 2004 following the repayment of the line of credit and an additional $4.3 million under promissory notes is due in the fourth quarter of 2004. We are required to make monthly payments of principal on the line of credit of $106,666 through August 2004 We might not have sufficient funds to repay the debt, or be able to obtain other financing to replace the debt or obtain an extension of its maturity. In addition, if an event of default occurs under the promissory notes or senior credit facility, the indebtedness would become due and payable. In such an event, it is unlikely that we will have the funds necessary to repay all of the indebtedness.

Our obligations to repurchase shares of our common stock will divert available cash from use in operation; and we may not have the funds available to meet our obligations. We granted the seller in an acquisition the right to sell back to us shares of our common stock that we issued in connection with the acquisition. Unless our common stock satisfies specific price targets, these rights could require us to purchase up to 75,000 shares of our common stock at a cost to us of $1.1 million as follows: (i) 25,000 shares at a cost to us of $350,000 and (ii) 50,000 shares at a cost to us of $750,000 commencing December 31, 2005. The repurchase obligations expire based on the stock reaching the repurchase price for a period of 10 consecutive trading days. We have asserted that the price targets were maintained and that the obligation has expired. The seller has disputed this assertion and asserts the right to put 25,000 shares at a price of $14.00 per share beginning on December 31, 2003 and 50,000 shares at a price of $15.00 per share beginning on December 31, 2005. The seller has demanded the repurchase of the 25,000 shares for $350,000. At this time, the status of these discussions is open and we do not know what the outcome will be. We may not have the funds to meet these obligations to repurchase stock, which could result in the holder of these rights commencing lawsuits to enforce his rights. Even if we have the funds available to meet these obligations, such payments will adversely affect our cash flow and divert cash from use in operations.

Risks Relating to our Operations

If we do not have sufficient funds to market to attract new members and customers, our customer and revenue bases will continue to erode. Because we significantly reduced our market expenditures for new members, our club membership and revenues declined significantly. Sales for the year ended December 31, 2003 decreased $9.1 million or 20% to $36.6 million as compared to $45.7 million for the year ended December 31, 2002. Audio Book Club sales decreased by $8.0 million to $26.4 million for the year ended December 31, 2003 from $34.4 million for the year ended December 31, 2002, principally due to a decrease in club membership as a result of a reduction in our advertising expenditures for new members. For the year ended December 31, 2003, we spent $2.1 million to attract new Audio Book Club members, a reduction of $6.2 million, or 74.7%, from the amount spent to attract new members of $8.3 million during the year ended December 31, 2002, principally due to the lack of necessary funds. If we do not have the funds available to spend to acquire new members to offset member attrition and/or expand our existing membership and customer bases, our revenue will continue to decline, which will continue to negatively impact our performance and could ultimately impair our ability to continue as a going concern.

Our products are sold in a niche market that may have limited future growth potential. Although the market for audiobooks has expanded in recent years, the markets for our products are niche markets. Consumer interest in audiobooks and old-time radio may decline in the future, and growth trends in these markets may stagnate or decline. A decline in the popularity of audiobooks and old-time radio would limit our future growth potential and negatively impact our future operating results.

We may be unable to anticipate changes in consumer preference for our products and may lose sales opportunities. Our success depends largely on our ability to anticipate and respond to a variety of changes in the audiobook and old-time radio industries. These changes include economic factors affecting discretionary consumer spending, modifications in consumer demographics and the availability of other forms of entertainment. The audiobook and old-time radio markets are characterized by changing consumer preferences, which could affect our ability to:

- plan for catalog offerings;
- introduce new titles;

- anticipate order lead time;
- accurately assess inventory requirements; and
- develop new product delivery methods.

Although we evaluate many factors and attempt to anticipate the popularity and life cycle of audiobook titles, the ultimate level of demand for specific titles is subject to a high level of uncertainty. Sales of audiobook titles typically decline rapidly after the first few months following release. If sales of specific titles decline more rapidly than we expect, we could be left with excess inventory, which we might be forced to sell at reduced prices. If we fail to anticipate and respond to factors affecting the audiobook industry in a timely manner, we could lose significant amounts of capital or potential sales opportunities.

We may experience system interruptions, which affect access to our web sites and our ability to sell products over the Internet. Our future revenue depends, in part, on the number of web site visitors who join as Audio Book Club members and who make online purchases. The satisfactory performance, reliability and availability of our web sites, transaction-processing systems and network infrastructure are critical to our ability to attract and retain visitors at our web sites. If we experience system interruptions that prevent customers and potential customers from accessing our web sites, consumer perception of our on-line business could be adversely affected, and we could lose sales opportunities and visitor traffic.

We may not be able to license or produce desirable spoken word content, which could reduce our revenues. We could lose sales opportunities if we are unable to continue to obtain the rights to additional audiobook libraries or selected audiobook titles. Some of our license agreements expire over the next several months unless they are renewed. We may not be able to renew existing license and supply arrangements for audiobook publishers' libraries or enter into additional arrangements for the supply of new audiobook titles.

If our third-party providers fail to perform their services properly, our business and results of operations could be adversely affected. Third-party providers conduct all of our Audio Book Club and a majority of our Radio Spirits customer service operations, process orders and collect payments for us. If these providers fail to perform their services properly, Audio Book Club members and Radio Spirits' customers could develop negative perceptions of our business, collections of receivables could be delayed, our operations might not function efficiently, our expenses may increase and our revenue may decline.

If our marketing strategies to acquire new members are not successful, we will not acquire as many members as we anticipate or acquire members whose performance is unprofitable, which would inhibit our sales growth or increase our costs.

If our direct mail and other marketing strategies are not successful, our per member acquisition costs may increase and we may acquire fewer new members than anticipated or the members we do acquire may not purchase as many products as we anticipate, return products at a higher rate than we expect or fail to pay for their purchases. As a result, our operating results would be negatively impacted and our sales growth would be inhibited.

The public may become less receptive to unsolicited direct mail campaigns. The success of our direct mail campaigns is dependent on many factors including the public's acceptance of direct mail solicitations. Negative public reception of direct mail solicitations will result in lower customer acquisitions rates and higher customer acquisition costs and will negatively impact operating results and sales growth.

Increased member attrition could negatively impact our future revenues and operating results.
As is typical with membership clubs, we experience significant member attrition. Our audiobook club lost more active members than new members that joined in 2003. Increases in membership attrition above the rates we anticipate could materially reduce our future revenues. We incur significant up front expenditures in connection with acquiring new members. A member may not honor his or her commitment, or we may choose to terminate a specific membership for several reasons, including failure to pay for purchases, excessive returns or cancelled orders. As a result, we may not be able to fully recoup our costs associated with acquiring new members. In addition, once a member has satisfied his or her initial commitment to purchase additional audiobooks at regular prices, the member has no further commitment to make purchases.

New laws addressing the sending of e-mails may limit our ability to market or subject us to penalties.
New laws recently enacted to limit "spam" e-mails may impact our ability to conduct e-mail campaigns. While we attempt to only use "opt-in" e-mail addresses and to work with third parties whose lists consist of "opt-in" e-mails, the law may limit the number of third parties whose lists we can use or significantly reduce the number of e-mails within these lists. Limitations on our ability to continue the use of e-mail marketing campaigns could adversely affect our ability to attract new audiobook club members and increase our cost to acquire new members.

The closing of retail stores, which carry our products could negatively impact our wholesale sales of these products.
Bankruptcy filings by major retailers may limit the number of outlets for our old-time radio products. With fewer chains and stores available as distribution outlets, competition for shelf space will increase and our ability to sell our products could be impacted negatively. Moreover, our wholesale sales could be negatively impacted if any of our significant retail customers were to close a significant number of their locations or otherwise discontinue selling our products.

If third parties obtain unauthorized access to our member and customer databases and other proprietary information, we would lose the competitive advantage they provide.
We believe that our member file and customer lists are valuable proprietary resources, and we have expended significant amounts of capital in acquiring these names. Our member and customer lists, trade secrets, trademarks and other proprietary information have limited protection. Third parties may copy or obtain unauthorized access to our member and customer databases and other proprietary know-how, trade secrets, ideas and concepts.

Competitors could also independently develop or otherwise obtain access to our proprietary information. In addition, we rent our lists for one-time use only to third parties that do not compete with us. This practice subjects us to the risk that these third parties may use our lists for unauthorized purposes, including selling them to our competitors. Our confidentiality agreements with our executive officers, employees, list managers and appropriate consultants and service suppliers may not adequately protect our trade secrets. If our lists or other proprietary information were to become generally available, we would lose a significant competitive advantage.

If we are unable to pay our accounts payable in a timely manner, our suppliers and service providers may refuse to supply us with products or provide services to us.

At December 31, 2003, we owed approximately $8.2 million to trade and other creditors. Approximately $6.1 million of these accounts payable were more than 60 days past due. If we do not make satisfactory payments to our vendors, they may refuse to continue to provide us with products or services on credit, which could interrupt our supply of products or services.

Higher than anticipated product return rates could reduce our future operating results.

We experienced product return rates of approximately 24%, 26%, and 32% during the years ended December 31, 2001, 2002 and 2003, respectively. If members and customers return products to us in the future at higher rates than in the past or than we currently anticipate, our net sales would be reduced and our operating results would be adversely affected. A return rate in excess of our allowance for returns would result in a charge to earnings to write off the related receivables and would reduce our assets.

If we are unable to collect our receivables in a timely manner or attract paying members, it may negatively impact our cash flow and our operating results.

We experienced bad debt rates of approximately 6.1%, 6.2%, and 10.8% during the years ended December 31, 2001, 2002 and 2003, respectively. We are subject to the risks associated with selling products on credit, including delays in collection or uncollectibility of accounts receivable. If we experience significant delays in collection or uncollectibility of accounts receivable, our liquidity and working capital position could suffer and we could be required to increase our allowance for doubtful accounts, which would increase our expenses and reduce our assets.

Increases in costs of postage could negatively impact our operating results.

We distribute millions of mailings each year, and postage is a significant expense in the operation of our business. We do not pass on the costs of member mailings and member solicitation packages. Even small increases in the cost of postage, multiplied by the millions of mailings we conduct, would result in increased expenses and would negatively impact our operating results.

We face significant competition from a wide variety of sources for the sale of our products.

We may not be able to compete effectively because of the significant competition in our markets from many competitors, many of whom are better financed and have greater resources and from other competing products, which provide similar entertainment value. We compete with other web sites, retail outlets and catalogs, which offer similar entertainment products or content, including digital download of spoken word content. New competitors, including large companies, may elect to enter the markets for audiobooks and spoken word content. We also compete for discretionary consumer spending with mail order clubs and catalogs, other direct marketers and retailers that offer products with similar entertainment value as audiobooks and old-time radio and classic video programs, such as music on cassettes and compact discs, printed books, videos, and laser and digital video discs. Many of these competitors are well-established companies, which have greater financial resources that enable them to better withstand substantial price competition or downturns in the market for spoken word content.

Risks Relating to Our Capital Structure

The Herrick family exerts significant influence over shareholder matters.

Norton Herrick, Howard Herrick, a director of MediaBay, their family members and affiliates own approximately 24% of our outstanding common stock and all of our outstanding Series A convertible preferred stock, and therefore, have the right to cast approximately 40% of the voting power of our capital stock. They also own principal amount of $7.1 million of convertible debt and warrants and options, which in the aggregate are convertible or exercisable into approximately 19.2 million shares of our common stock at prices ranging from $0.56 per share to $4.00 per share, which if converted and exercised, would give them the right to vote, in total, approximately 63% of the voting power of our capital stock. As significant shareholders, they exert significant influence over matters, which require shareholder vote, including the election of directors, amendments to our Articles of Incorporation or approval of the dissolution, merger, or sale of MediaBay, our subsidiaries or substantially all of our assets. In addition, consent of the holders of the Series A convertible preferred stock is required for certain actions, including a merger or other business combination, certain assets sales, the creation, authorization or increase of any series of shares of capital stock convertible into common stock, incurrence of indebtedness and declaration or payment of dividends on capital stock. Ownership of the convertible debt restricts our ability to take other corporate actions, including the incurrence of additional debt, without the holders' consent. This concentration of ownership and control by the Herrick family could delay or prevent a change in our control or other action, even when a change in control or other action might be in the best interests of other shareholders.

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Our ability to use our net operating losses will be limited in future periods, which could increase our tax liability. Under Section 382 of the Internal Revenue Code of 1986, utilization of prior net operating losses is limited after an ownership change, as defined in Section 382, to an annual amount equal to the value of the corporation's outstanding stock immediately before the date of the ownership change multiplied by the long-term tax exempt rate. In the event we achieve profitable operations, any significant limitation on the utilization of net operating losses would have the effect of increasing our tax liability and reducing after tax net income and available cash reserves. We are unable to determine the availability of net operating losses since this availability is dependent upon profitable operations, which we have not achieved in prior periods.

Our stock price has been and could continue to be extremely volatile. The market price of our common stock has been subject to significant fluctuations since our initial public offering in October 1997. The securities markets have experienced, and are likely to experience in the future, significant price and volume fluctuations, which could adversely affect the market price of our common stock without regard to our operating performance. In addition, the trading price of our common stock could be subject to significant fluctuations in response to:

- our ability to maintain listing of our common stock on NASDAQ;
- actual or anticipated variations in our quarterly operating results;
- announcements by us or other industry participants,
- factors affecting the market for spoken word content;

- changes in national or regional economic conditions;
- changes in securities analysts' estimates for us, our competitors' or our industry or our failure to meet such analysts' expectations; and
- general market conditions.

A large number of shares of our common stock could be sold in the market in the near future, which could depress our stock price.
As of April 12, 2004, we have outstanding approximately 18.5 million shares of common stock. In addition, a substantial portion of our shares are currently freely trading without restriction under the Securities Act of 1933, having been registered for resale or held by their holders for over 2 years and are eligible for sale under Rule 144(k). At April 12, 2004 there were outstanding options and warrants to purchase and debt convertible into approximately 29,535,000 shares of our common stock at an average exercise or conversion price of approximately $1.56 per share. A substantial portion of these shares has been registered for resale. To the extent any of our warrants or options are exercised, your percentage ownership will be diluted and our stock price could be further adversely affected. Moreover, as the underlying shares are sold, the market price could drop significantly if the holders of these restricted shares sell them or if the market perceives that the holders intend to sell these shares.

ITEM 2. PROPERTIES
We lease approximately 12,000 square feet of office space in Cedar Knolls, New Jersey pursuant to a sixty-six month lease agreement dated April 18, 2003. We entered into two ten-year leases on 7,000 square feet of office and warehouse space in Bethel, Connecticut and 3,000 square feet of warehouse space in Sandy Hook, Connecticut, respectively. Lease payments and mandatory capital improvement payments, starting in 2004, are $4,000 per year and $2,000 per year on the Bethel and Sandy Hook properties, respectively. We currently sub-lease the office and warehouse space in Bethel.

ITEM 3. LEGAL PROCEEDINGS
We are not a party to any lawsuit or proceeding, which we believe is likely to have a material adverse effect on us.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS
An Annual Meeting of Shareholders was held on August 11, 2003 at which time Mr. Richard Berman, Mr. Howard Herrick and Mr. Carl Wolf were reappointed to serve as a Class III directors until the Annual Meeting of Shareholders of the Company to be held in 2006. Shareholder voting for these directors was as follows:

Director	Votes For	Votes Withheld
Richard J. Berman	13,850,641	244,254
Howard Herrick	13,739,541	355,354
Carl T. Wolf	13,848,141	246,754

The following directors serve as directors for the term indicated opposite their respective names:

Director	Class	Expiration of Term

Paul D. Ehrlich	I	2004
Joseph R. Rosetti	I	2004
Jeffrey Dittus	II	2005
Mark P. Hershhorn	II	2005
Richard J. Berman	III	2006
Howard Herrick	III	2006
Carl T. Wolf	III	2006

In addition, at the annual meeting, the shareholders approved a proposal to authorize us to issue our common stock upon conversion of certain convertible shares of the Series B Convertible Preferred Shares (the "Series B Stock") issued to certain of our officers and directors by a vote of 8,418,809 votes for, 352,599 votes against, 10,460 votes abstaining and 5,313,027 broker non-votes.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

MediaBay's common stock has been quoted on the Nasdaq National Market under the symbol "MBAY" since November 15, 1999. The following table shows the high and low sales prices of our common stock as reported by the Nasdaq National Market.

	HIGH	LOW
FISCAL YEAR ENDED DECEMBER 31, 2002		
First Quarter	3.50	.59
Second Quarter	6.04	3.20
Third Quarter	4.90	.77
Fourth Quarter	1.63	.77
FISCAL YEAR ENDED DECEMBER 31, 2003		
First Quarter	1.27	.77
Second Quarter	1.11	.64
Third Quarter	1.10	.60
Fourth Quarter	1.65	.80
FISCAL YEAR ENDED DECEMBER 31, 2004		
First Quarter	1.59	.52

On April 12, 2004 the last reported sale price of our common stock on the Nasdaq National Market was $.68 per share. As of April 12, 2004, there were approximately 144 record owners of our common stock. We believe that there are more than 400 beneficial owners of our common stock.

DIVIDEND POLICY

We have never declared or paid and do not anticipate declaring or paying any dividends on our common stock in the near future. The terms of our debt agreements prohibit us from declaring or paying any dividends or distributions on our common stock. Any future determination as to the declaration and payment of dividends will be at the discretion of our Board of Directors and will depend on then existing conditions, including our financial condition, results of operations, capital requirements, business factors and other factors as our Board of Directors deems relevant.

SALES OF SECURITIES AND USE OF PROCEEDS

During the three months ended December 31, 2003, we issued options under our 2001 and 1999 Stock Incentive Plans to purchase a total of 1,259,925 shares of our common stock to officers, directors and consultants. We relied on the exemptions provided by Section 4(2) of the Securities Act of 1933 in connection with such issuances.

ITEM 6. SELECTED FINANCIAL DATA

As a result of the following factors, including capitalization of direct response advertising costs, recording of the goodwill write-off, the strategic charges and the income tax benefit, as well as fluctuations in operating results depending on the timing, magnitude and success of Audio Book Club new member advertising campaigns, comparisons of our historical operating results from year to year may not be meaningful.

During the fourth quarter of 2000, we reviewed long-lived assets and certain related identifiable intangibles, including goodwill, for impairment. As a result, in the fourth quarter of 2000, we determined that the goodwill associated with certain acquired businesses was impaired and recorded an impairment charge of $38.2 million.

In the third quarter of 2001, we began to implement a series of actions and decisions designed to improve gross profit margin, refine our marketing efforts and reduce general and administrative costs. In connection with the movement of the fulfillment of old-time radio products to a third party provider, in the first quarter of 2002, we closed our old-time radio operations in Schaumburg, Illinois and now run all of our operations, except for fulfillment, from our corporate headquarters located in Cedar Knolls, New Jersey. In the third quarter of 2001, as a result of the actions and decisions made after our aforementioned review of our operations, we recorded $11.3 million of strategic charges. In addition to these strategic charges, we recorded a charge of $2.0 million to write-off the entire carrying amount of our cost method investment in an unrelated entity.

As a result of the series of strategic initiatives described above, our operations had improved. Although realization of net deferred tax assets is not assured, we determined that it is more likely than not that a portion of our deferred tax asset relating to temporary differences between the tax bases of assets or liabilities and their reported amounts in the financial statements will be realized in future periods. Accordingly, in 2001, we reduced the valuation allowance for deferred tax assets in the amount of $17.2 million and recorded an income tax benefit. In 2003, the deferred tax asset was reduced by approximately $1.5 million for amounts, which the Company was unable to determine would be recoverable in future periods.

In the fourth quarter of 2003, we evaluated the performance of Audio Passages, an Audio Book Club marketing program tailored to listeners with an interest in Christian product and determined based on past performance and expected future performance that we should terminate the Audio Passages marketing program. In connection with the termination of the Audio Passages marketing program, we took a strategic charge for the establishment of a reserve for obsolescence of Audio Passages inventory of $0.3 million and an assets write-down for previously capitalized advertising, which are not recoverable in the amount of $0.5 million.

In 2003, the employment of two senior executives who had employment agreements was terminated and the decision was made to terminate the employment agreement of another senior executive. A consulting agreement was also terminated. We settled these employment agreements and consulting agreement for total consideration of $.5 million payable through May 2005.

	YEARS ENDED DECEM		
	1999	2000	2001
		(THOUSANDS, EXCEPT PE	
STATEMENT OF OPERATIONS DATA:			
Net sales	$ 46,227	$ 44,426	$ 41,80
Cost of sales	23,687	23,044	19,78
Cost of sales - write-downs	-	-	2,26
Advertising and promotion	8,118	11,023	11,92
Advertising and promotion - write-downs	-	-	3,97
Bad debt expense			2,53
General and administrative	10,762	14,406	8,94
Asset write-downs and strategic charges	-	-	7,04
Severance and other termination costs	-	-	
Depreciation and amortization	6,812	7,984	5,15
Non-cash write-down of intangibles	-	-	
Non-cash write-down of goodwill	-	38,226	
Operating (loss) income	(3,152)	(50,257)	(19,81
Interest income (expense), net	(6,271)	(2,940)	(2,79
Loss before income tax benefit (expense) and extraordinary item	(9,423)	(53,197)	(22,60
Income tax benefit (expense)	-	-	17,20
Loss before extraordinary item	(9,423)	(53,197)	(5,40
Extraordinary gain (loss) on early extinguishment of debt	999	(2,152)	
Net loss	(8,424)	(55,349)	(5,40
Dividends on preferred stock	-	-	
Net loss applicable to common shares	$ (8,424)	$ (55,349)	$ (5,40
Basic and diluted loss per share:			
Basic and diluted loss before extraordinary item	($1.15)	($4.18)	($0.3
Basic and diluted loss applicable to common shares	($1.03)	($4.35)	($0.3
Basic and diluted weighted average number of shares outstanding	8,205	12,718	13,86

	AS OF DECEM		
	1999	2000	200
		(THOUSANDS, EXCEPT	
BALANCE SHEET DATA:			
Working capital (deficit)	$ 1,599	$ 313	$ (4,16
Total assets	93,973	49,932	44,45
Current liabilities	20,275	17,103	15,49
Long-term debt (less current portion)	36,134	15,340	15,84
Common stock subject to contingent put rights	4,283	4,550	4,55

Stockholders' equity	33,281	12,939	8,56

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS INTRODUCTION We are a seller of spoken audio and nostalgia products, including audiobooks and old-time radio shows, through direct response, retail and Internet channels. Our content and products are sold in multiple formats, including physical (cassette and compact disc) and secure digital download formats.

We report financial results on the basis of four business segments; Corporate, Audio Book Club, Radio Spirits and MediaBay.com. A fifth division, RadioClassics, is aggregated with Radio Spirits for financial reporting purposes. Except for corporate, each segment serves a unique market segment within the spoken word audio industry. In 2003, our Audio Book Club segment had net sales of approximately $26.4 million, our Radio Spirits segment had net sales of approximately $10.2 million, our MediaBay.com segment had sales of approximately $0.1 million and we had eliminating inter-segment sales of $0.1 million.

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We derive our principal revenue through sales of audiobooks, classic radio shows and other spoken word audio products directly to consumers principally through direct mail. We also sell classic radio shows to retailers either directly or through distributors. We derive additional revenue through rental of our proprietary database of names and addresses to non-competing third parties through list rental brokers. We also derive a small amount of revenue from advertisers who advertise on our nationally syndicated classic radio shows.

Our business is dependent on attracting and retaining members in Audio Book Club. We continually monitor the cost to acquire new members, their buying behavior and the attrition rate of members. Any changes to these metrics could have a significant impact on our business.

Historically, we have funded our cash requirements through sales of equity and debt securities and borrowings from financial institutions and our principal shareholders. During 2003, we did not have sufficient cash to undertake marketing activities to the extent of historical levels. As a result, our member and customer bases eroded and our revenues declined significantly. We currently do not have sufficient funds to market to attract new members and customers to maintain our member and customer bases. We will require additional financing to conduct sufficient marketing activities to maintain and rebuild our member and customer bases. If we do not obtain the funds necessary to increase our advertising to acquire new members to offset member attrition and/or expand our existing membership and customer bases, our revenue will continue to decline, which will continue to negatively impact our performance and could ultimately impair our ability to continue as a going concern.

We also have significant outstanding indebtedness and face substantial debt repayment obligations in the short-term. Our line of credit, of $1.4 million as of April 12, 2004, is due September 30, 2004, an additional $10.8 million is due upon demand of the holders of notes which may be made at various times during 2004 following the repayment of the line of credit and an additional $4.3 million under promissory notes is due in the fourth quarter of 2004. We currently do not have sufficient funds to repay our debt as it will become due and are actively seeking to obtain other financing to replace the debt or obtain an extension of the maturities.

We have implemented a series of initiatives to increase cash flow. While these initiatives and the significant reduction in marketing expenses increased cash provided by operating activities in 2003, we cannot sustain our operations without increasing marketing expenses. We require additional financing to repay debt, as described above, and to fund the maintenance of our operations, working capital or other related uses.

The preparation of financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. We record reductions to our revenues for future returns and record an estimate of future bad debts arising from current sales in general and administrative expenses. These allowances are based upon historical experience and evaluation of current trends. If the financial condition of our customers, including either individual consumers or retail chains, were to deteriorate or if the payment behavior were to change, resulting in either their inability or refusal to make payment to us, additional allowances would be required. We capitalize direct response marketing costs for the acquisition of new members and amortize these costs over the period of probable future benefits. In order to determine the amount of advertising to be capitalized and the manner and period over which the advertising should be amortized, we prepare estimates of probable future revenues arising from the direct-response advertising in excess of future costs to be incurred in realizing those revenues. We record an estimate of our anticipated bad debt expense based on our historical experience.

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The ultimate realization of deferred tax assets is dependent on the generation of future taxable income during the periods in which temporary timing differences become deductible. Although realization of net deferred tax assets is not assured, management has determined that it is more likely than not that a portion of our deferred tax asset relating to temporary differences between the tax bases of assets or liabilities and their reported amounts in the financial statements will be realized in future periods. In 2003, the deferred tax asset was reduced by approximately $1.5 million for amounts, which we were unable to determine would be recoverable in future periods.

We completed our annual impairment test of goodwill as of October 31, 2003 in connection with the annual budgeting and planning process, which did not result in an impairment loss. However, if conditions or circumstances were to change resulting in a deterioration of our Radio Spirits business, a future impairment of goodwill could be necessary.

CRITICAL ACCOUNTING POLICIES

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. On an on-going basis we evaluate our estimates including those related to product returns, bad debts, the carrying value and net realizable value of inventories, the recoverability of advances to publishers and other rightsholders, the future revenue associated with deferred advertising and promotion costs, investments, fixed assets, the valuation allowance provided to reduce our deferred tax assets and valuation of goodwill and other intangibles.

The Securities and Exchange Commission ("SEC") defines "critical accounting policies" as those that require application of management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain and may change in subsequent periods.

Our significant accounting policies are described in Note 3 to the Notes to Consolidated Financial Statements. Not all of these significant accounting policies require management to make difficult, subjective or complex judgments or estimates. However the following policies are considered to be critical within the SEC definition:

Revenue Recognition
We derive our principal revenue through sales of audiobooks, classic radio shows and other spoken word audio products directly to consumers principally through direct mail. We also sell classic radio shows to retailers either directly or through distributors. We derive additional revenue through rental of our proprietary database of names and addresses to non-competing third parties through list rental brokers. We also derive a small amount of revenue from advertisers included in our nationally syndicated classic radio shows. We recognize sales to consumers, retailers and distributors upon shipment of merchandise. List rental revenue is recognized on notification by the list brokers of rental by a third party when the lists are rented. We recognize advertising revenue upon notification of the airing of the advertisement by the media buying company representing us. Allowances for future returns are based upon historical experience and evaluation of current trends. The historical return rates for ABC members have been consistent for the past year and our estimate is based on a detailed historical examination of trends. Based on the current performance and historical trends, we do not expect significant changes in the estimate of returns for ABC members. The estimate of returns for wholesale sales of our old-time radio products is based on a detailed review of each significant customer, depending on the amount of products sold to a particular customer in a specific periods, the overall return rate for wholesale sales could vary.

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We record reductions to our revenue for future returns and record an estimate of future bad debts arising from current sales in general and administrative expenses. These allowances are based upon historical experience and evaluation of current trends. If members and customers return products to us in the future at higher rates than in the past or than we currently anticipate, our net sales would be reduced and our operating results would be adversely affected. In November 2001, the Emerging Issues Task Force ("EITF") issued EITF No. 01-9, "Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)", which addresses the income statement classification of certain credits, allowances, adjustments, and payments given to customers for the services or benefits provided. We adopted EITF No. 01-9 effective January 1, 2002, and, as such, have classified the cost of these sales incentives as a reduction of sales. The effect on sales of applying EITF No. 01-9 in 2002 and 2003 was $118,000 and $60,000, respectively.

Deferred Member Acquisition Costs
We are required to capitalize direct response marketing costs for the acquisition of new members in accordance with AICPA Statement of Position 93-7 "Reporting on Advertising Costs" and amortize these costs over the period of probable future benefits. In order to determine the amount of advertising to be capitalized and the manner and period over which the advertising should be amortized, we prepare estimates of probable future revenues arising from the direct-response advertising in excess of future costs to be incurred in realizing those revenues. If future revenue does not meet our estimates or if members buying patterns were to shift, adjustments to the amount and manner of

amortization would be required. At December 31, 2003 we had deferred member acquisition costs of $3.2 million, which is being amortized over eighteen and thirty month periods. We have tracked customer-buying behavior and believe that the estimates we have used to amortize ABC advertising have been consistent and we do not expect to see significant changes. In the fourth quarter of 2003, we adjusted the amortization period for advertising to attract customers to our World's Greatest Old-Time Radio continuity program and have revised the estimate period for amortization of these advertising costs down to 18 months, which resulted in and increase in advertising expenses for the year ended December 31, 2003 of $409,000.

Accounts Receivable Valuation

We record an estimate of our anticipated bad debt expense and return rates based on our historical experience. If the financial condition of our customers, including either individual consumers or retail chains, were to deteriorate, or if the payment or buying behavior were to change, resulting in either their inability or refusal to make payment to us, additional allowances would be required. For example, a one percent increase in returns as a percentage of gross sales for the year ended 2003, assuming a constant gross profit percentage and all other expenses unchanged, would have resulted in a decrease in net sales of $536,000 and a increase in net loss available to common shares of $279,000. A one percent increase in bad debt expenses as a percentage of net sales, assuming all other expenses were unchanged, would have resulted in an increase in bad debt expenses and a corresponding increase in net loss available to common shares of $366,000. Our estimate of bad debt expenses in 2003 was adjusted upward due to the poor paying performance of ABC members attracted through Internet offers, which did not require an upfront payment and members of Audio Passages, our audiobook club with predominantly Christian content whose members also demonstrated poor paying performance. Our Internet advertising currently requires payment with a credit card of the initial order and will continue to require a credit card until we develop better credit screening methods. We have discontinued the Audio Passages marketing program.

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Income Taxes

The ultimate realization of deferred tax assets is dependent on the generation of future taxable income during the periods in which temporary timing differences become deductible. Although realization of net deferred tax assets is not assured, we have determined that it is more likely than not that a portion of our deferred tax asset relating to temporary differences between the tax bases of assets or liabilities and their reported amounts in the financial statements will be realized in future periods. We determine the utilization of deferred tax assets in the future based on our current year projections of future periods. . In 2003, the deferred tax asset was reduced by approximately $1.5 million for amounts, which we were unable to determine would be recoverable in future periods.

At December 31, 2003, we have a remaining net deferred tax asset in the amount of $14.8 million. Should we determine we would be able to realize deferred tax assets in the future in excess of the net recorded amount, an adjustment to our deferred tax asset would increase income in the period such determination is made. Likewise, should we determine that we will not be able to realize all or part of our net deferred tax asset in the future, an adjustment to the deferred tax asset would be recorded as an increase to the valuation allowance, resulting in a deferred tax expense charged against income in the period such determination is made.

Goodwill

Goodwill represents the excess of the purchase price over the fair value of net assets acquired in business combinations accounted for using the purchase method of accounting. In July 2001, the Financial Accounting Standards Board issued SFAS No. 142, "Goodwill and Other Intangible Assets". SFAS No. 142 requires that an intangible asset that is acquired shall be initially recognized and measured based on its fair value. The statement also provides that goodwill should not be amortized, but shall be tested for impairment annually, or more frequently if circumstances indicate potential impairment, through a comparison of fair value to its carrying amount. At December 31, 2003, we had $9.7 million of goodwill, all of which relates to our Radio Spirits operations. We completed our annual impairment test as of October 31, 2003 in connection with the annual budgeting and planning process, which did not result in an impairment loss. However, if conditions or circumstances were to change resulting in a deterioration of our Radio Spirits business, a future impairment of goodwill could be necessary.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, historical operating data as a percentage of net sales.

	YEAR ENDED DECE	
	2001	2002
Sales..	100%	100%
Cost of sales..	47	45
Cost of sales - write-downs..................................	5	--
Advertising and promotion....................................	29	22
Advertising and promotion - write-downs......................	10	--
Bad debt expense	6	6
General and administrative expense...........................	21	18
Severance and other termination costs	--	--
Asset write-downs and strategic charges......................	17	--
Depreciation and amortization expense........................	12	3
Non-cash write-down of intangibles...........................	--	3
Interest expense, net..	7	7
Income tax expense (benefit).................................	(41)	1
Net (loss)...	(13)	(5)
Dividends on preferred stock.................................	--	--
Net (loss) applicable to common shares.......................	(13)	(5)

Year ended December 31, 2003 compared to year ended December 31, 2002

Net Sales

($000'S)

	2002	2003	CHANGE FROM 2002 TO 2003	% CHANGE
AUDIO BOOK CLUB	$34,343	$ 26,380	$ (7,963)	(23.2)%

RADIO SPIRITS				
Catalog	4,507	4,210	(297)	(6.6)%
Wholesale	5,594	3,048	(2,546)	(45.5)%
Continuity	1,085	2,841	1,756	161.8%
	11,186	10,099	(1,087)	(9.7)%
MEDIABAY.COM	215	138	(77)	(35.8)%
	$45,744	$ 36,617	$ (9,127)	(20.0)%

Audio Book Club sales decreased principally due to a decrease in club membership as a result of a reduction in our advertising expenditures for new members. For the year ended December 31, 2003, the Audio Book Club spent $2.1 million to attract new members, a reduction of $6.2 million, or 74.7%, from the amount spent to attract new members of $8.3 million during the year ended December 31, 2002. Audio Book Club attracted approximately 134,000 new members in the year ended December 31, 2003 as compared to approximately 290,000 new members in the year ended December 31, 2002.

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The decrease in Radio Spirits catalog sales is principally attributable to reduced catalog mailings. We spent $81,000, or 7.8% less in advertising during the year ended December 31, 2003 as compared to the spending during the year ended December 31, 2002. Wholesale sales of old-time radio products decreased principally due to reduced sales to three major customers in 2003 and higher returns from our major customers. Sales of our The World's Greatest Old-Time Radio continuity program increased for the year ended December 31, 2003, as compared to the year ended December 31, 2002, principally due to the inclusion of a full year of sales in 2003. The World's Greatest Old-Time Radio continuity program was introduced in the third quarter of 2002.

Cost of Sales $ (000's)	2002		2003		
	$	AS A % OF NET SALES	$	AS A % OF NET SALES	CHA
AUDIO BOOK CLUB	$14,821	43.2%	$ 12,107	45.9%	$ (2
RADIO SPIRITS					
Catalog	1,874	41.6%	2,015	47.9%	
Wholesale	3,072	54.9%	2,057	67.5%	(1
Continuity	884	81.5%	1,295	45.6%	
	5,830	52.1%	5,369	53.1%	
MEDIABAY.COM	-		5		

$20,651	45.1%	$ 17,479	47.7%

The principal reason for the decline in cost of sales at Audio Book Club was a reduction in net sales of 23.2% as described above. Cost of sales as a percentage of net sales at Audio Book Club for the year ended December 31, 2003 was 45.9%, compared to 43.2% for 2002. The increase in cost of sales as a percentage of net sales is principally due to increased costs relating to higher return rates in 2003, an increase in the reserve for obsolescence in 2003, in part related to the termination of Audio Passages, our Christian audiobook club, and higher average royalty rates since fewer books were sold in new member offerings, which have lower royalty rates, partially offset by a reduced number of heavily discounted books sold to new members due to a lower number of new members added in 2003 as compared to 2002.

As a percentage of net sales, cost of sales at Radio Spirits increased to 53.1% for the year ended December 31, 2003 from 52.1% for the year ended December 31, 2002. Cost of catalog sales increased as a percentage of net sales to 47.9% for the year ended December 31, 2003 as compared to 41.6% for the year ended December 31, 2002 principally due to sales of discounted items both in the Radio Spirits catalog and through a campaign on radio stations. The cost of wholesale sales as percentage of net revenue increased to 67.5% as compared to 54.9% for the year ended December 31, 2002 principally due to the sales of slower moving items at heavily discounted prices in remainder sales and costs associated with higher returns. The cost of World's Greatest Old-Time Radio continuity sales as a percentage of net income decreased 45.6% from 81.5%. The continuity program commenced in August 2002 and the majority of sales in 2002 were of heavily discounted introductory merchandise designed to attract new buyers.

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Advertising and promotion

($000'S)	2002	2003	FROM 2002 TO 200 CHANGE	% CH
AUDIO BOOK CLUB				
New Member	$ 8,269	$ 2,092	$ (6,177)	
Current Member	2,310	1,993	(317)	
	10,579	4,085	(6,494)	
RADIO SPIRITS				
Catalog	1,070	964	(106)	
Wholesale	151	74	(77)	
Continuity	885	775	(110)	
	2,106	1,813	(293)	
NEW PROJECTS	-	339	339	
TOTAL SPENDING	12,685	6,237	(6,448)	

AMOUNT CAPITALIZED	(8,099)	(2,410)
AMOUNT AMORTIZED	5,571	6,161
ADVERTISING AND PROMOTION EXPENSE	$ 10,157	$ 9,988

Although advertising and promotion expenses were relatively consistent, actual advertising expenditures in the year ended December 31, 2003 were $6.2 million, a decrease of $6.4 million or 50.8% over the amount spent during the year ended December 31, 2002 of $12.7 million.

As the chart below indicates, we attempted to grow our Audio Book Club very aggressively in 2002. We spent $8.3 million to attract new members to our Audio Book Club in 2002.

[BAR CHART OMITTED]

The largest increases in 2002 as compared to 2001 were in attracting members through the Internet to our Audio Book Club in offers which required no immediate payment to join the club or purchase the initial books ("Bill Me Members") and in attracting member to Audio Passages, an audiobook club with products intended for a Christian audience. The cost to acquire these customers was lower than our traditional direct mail campaigns to acquire Audio Book Club members, however the performance of both the members attracted through the Internet and the Audio Passages members was much worse than our traditional Audio Book Club members. Because we spent a substantial amount of money to acquire these members and their performances were worse than we anticipated, we did not have much funds for advertising in 2003 and accordingly our advertising and promotion activities were dramatically reduced in 2003. A large portion of advertising expenditures in 2002 was capitalized and a substantial portion of that advertising was expensed in 2003. As the chart indicates our new member recruitment was significantly reduced in 2003. In 2004, we have done a small amount of marketing for new ABC members on an Internet offer requiring credit card payment. While the initial response was encouraging we continue to monitor the buying and payment behavior of these customers and currently do not have sufficient funds to conduct any additional marketing.

Bad Debt Expense

$ (000's)	2002 $	2002 AS A % OF NET SALES	2003 $	2003 AS A % OF NET SALES	FROM 2002 TO 2003 CHANGE	% CHANG
AUDIO BOOK CLUB	$2,735	8.0%	$ 3,404	12.9%	$ 669	24.
RADIO SPIRITS						
Catalog	--	--	--	--	-	
Wholesale	15	0.3%	15	0.5%	-	
Continuity	71	6.5%	521	18.3%	450	633

	86	1.5%	536	5.3%	450	523
MEDIABAY.COM	--	--	--	--	--	
	$2,821	13.7%	$ 3,940	10.8%	$1,119	39.

Bad debt expense at Audio Book Club increased by $.7 million to $3.4 million, or 12.9%of sales. The principal reason for the increase in bad debt expense at Audio Book Club was the attraction of over 96,000 members through the Internet, most of which were Bill Me Members. The bad debt rates for the initial discounted offer to these Bill Me Internet Members often exceeded 50% and the bad debt rate for shipments subsequent to payment for the initial offer exceeded the historical bad debt rate of the Audio Book Club acquired through direct mail. We stopped offering Bill Me offers on the Internet in the second quarter of 2003 and are testing alternatives methods to attract members either through an offer requiring immediate payment of the initial offer with a credit card or much more extensive initial screening methods.

The bad debt expense of World's Greatest Old-Time Radio continuity members for the year ended December 31, 2003 increased by $.4 million to $.5 million from $.1 million for the year ended December 31, 2002. As a percentage of net sales, bad debt for the year ended December 31, 2003 were 18.3% as compared to 6.5% for the year ended December 31, 2002. The program commenced in 2002, and as the program matured in 2003, and customer-paying behavior became more evident, the allowance for bad debts and the corresponding bad debt rate increased.

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General and Administrative

$ (000's)	2002		2003		FROM 2002 TO 2003	
	$	AS A % OF NET SALES	$	AS A % OF NET SALES	CHANGE	% CHANGE
AUDIO BOOK CLUB	$ 2,842	8.3%	$ 2,626	10.0%	$ (216)	(7.6)%
RADIO SPIRITS	1,617	14.5%	1,163	11.5%	(454)	(28.1)%
MEDIABAY.COM	654		614		(40)	(6.1)%
CORPORATE	3,234		2,412		(822)	(25.4)%
	$ 8,347	18.2%	$ 6,815	18.6%	$ (1,532)	(18.4)%

General and administrative expenses at Audio Book Club declined principally due to reductions in payroll due to reduced staff. General and administrative expenses at Radio Spirits for the year ended December 31, 2003 declined principally due to reductions in payroll due to reduced staff and commissions to outside sales personnel due to lower wholesale sales, lower consulting costs principally due to the termination of a consulting agreement entered in to 2001 with the previous president of Radio Spirits following his resignation and settlement of all outstanding amounts with a former joint venture partner responsible for syndication of our old-time radio shows on broadcast radio. Our corporate general and administrative expenses for the year ended December 31, 2003 declined principally due to reductions in public and investor relations, travel and legal fees partially offset by higher insurance costs.

Asset write-downs and strategic charges
(000's)

	2002	2003
ASSET WRITE-DOWNS AND STRATEGIC CHARGES	$ --	$749

In the fourth quarter of 2003, we evaluated the performance of Audio Passages, an Audio Book Club marketing program tailored to listeners with an interest in Christian product and determined based on past performance and expected future performance that we should terminate the Audio Passages marketing program. In connection with the termination of the Audio Passages marketing program, we took a strategic charge for the establishment of a reserve for obsolescence of Audio Passages inventory of $0.3 million and an assets write-down for previously capitalized advertising, which are not recoverable in the amount of $0.5 million.

Termination costs
(000's)

	2002	2003
TERMINATION COSTS	$ --	$544

In 2003, the employment of two senior executives who had employment agreements was terminated and the decision was made to terminate the employment agreement of another senior executive. A consulting agreement was also terminated. We agreed to make aggregate settlement payments under the employment agreements and consulting agreement for total consideration of $.5 million payable through May 2005.

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Depreciation and Amortization

$ (000's)	2002		2003		FROM 2002 TO 2003	
	$	AS A % OF NET SALES	$	AS A % OF NET SALES	CHANGE	% CHANGE
DEPRECIATION						
AUDIO BOOK CLUB	$ 124	0.4%	$ 104	0.4%	$ (20)	(16.1)%
RADIO SPIRITS	97	0.9%	42	0.4%	(55)	(56.7)%
AMORTIZATION						
CORPORATE	1,093		182		(911)	(83.3)%

$ 1,314	2.9%	$ 328	0.9%	$ (986)	-75.0%

The decrease in amortization expenses is principally attributable to the reduction of the carrying amounts of our intangible assets made in the fourth quarter of 2002. Specifically, we made a strategic decision to no longer compete in the DVD market and accordingly wrote off the value of certain video and DVD rights we had acquired in the amount of $90,000. We also made the strategic decision in the fourth quarter of 2002 to discontinue future mailings to the Columbia House lists of members of other clubs. Accordingly, in the fourth quarter of 2002, we wrote off the unamortized value of the Columbia House mailing agreement of $986,000.

Interest Expense

	2002	2003	FROM 2002 CHANGE
$ (000'S)			
INTEREST PAID	$ 766	$ 384	$ (382)
INTEREST ACCRUED	118	74	(44)
INTEREST INCLUDED IN DEBT	637	907	270
AMORTIZATION OF DEFERRED FINANCING COSTS AND ORIGINAL ISSUE DISCOUNT	1,453	560	(893)
TOTAL INTEREST EXPENSE	$ 2,974	$ 1,925	$ (1,049)

The reduction in interest expense is principally due to a reduction in the amortization of deferred financing costs and original issue discount of $0.9 million based on the original terms of the debt to which the costs and discount related.

Net loss before income taxes for the year ended December 31, 2003 was $5.2 million as compared to a net loss before income taxes for the year ended December 31, 2002 of $1.7 million.

Income Tax Expense

	2002	2003	FROM 2002 TO 2003 CHANGE	% CHANGE
$ (000'S)				
INCOME TAX EXPENSE	$ 550	$ 1,471	$ 921	167.5%

During the years ended December 31, 2003 and 2002, we utilized $1,471,000 and $550,000, respectively, of the $17.2 million deferred tax asset recorded in 2001. Accordingly, we recorded income tax expense of $1,471,000 and $550,000 for the years ended December 31, 2003 and 2002, respectively.

Preferred Stock Dividends

	2002	2003	FROM CHANGE
$ (000'S)			
DIVIDENDS ACCRUED ON SERIES A PREFERRED STOCK	217	228	11
DIVIDENDS ACCRUED ON SERIES B PREFERRED STOCK	-	18	18
TOTAL DIVIDENDS ACCRUED ON PREFERRED STOCK	$ 217	$ 246	$ 29

For the year ended December 31, 2003, we accrued preferred stock dividends of $0.2 million on the outstanding 25,000 shares of Series A Preferred stock, which were issued in January 2002 and $18,000 for dividends for Series B Preferred Stock issued May 2003.

Loss Applicable to Common Stockholders

	2002	2003	FROM CHANGE
$ (000'S)			
LOSS APPLICABLE TO COMMON STOCKHOLDERS	$ 2,510	$ 6,869	$ 4,359

Principally because of lower sales due in large part to reduced spending on new member advertising at Audio Book Club and lower wholesale sales at Radio Spirits, our net loss applicable to common shares increased $4.4 million to $6.9 million, or $.49 per diluted share as compared to a net loss applicable to common shares for the year ended December 31, 2002 of $2.5 million, or $.18 per diluted share of common stock.

Year ended December 31, 2002 compared with year ended December 31, 2001
Sales for the year ended December 31, 2002 increased $3.9 million or 9.4% to $45.7 as compared to $41.8 million for the year ended December 31, 2001. Audio Book Club increased sales by $2.5 million, principally due to an increase in club membership as a result of our marketing efforts to grow the business. For the year ended December 31, 2002, the Audio Book Club attracted approximately 294,000 members as compared to approximately 211,000 members who joined the Audio Book Club during the year ended December 31, 2001. The increase in Radio Spirits sales, of $1.3 million, is principally attributable to sales of the World's Greatest Old-Time Radio continuity program, a marketing program introduced in 2002, which is similar to our Audio Book Club and offers old-time radio products.

Cost of sales for the year ended December 31, 2002 was $20.7 million. Cost of sales for the year ended December 31, 2001 was $22.0 million, of which $2.3 million represented a charge for the write-down of inventory in the third quarter of 2001. Gross profit as a percentage of net sales for the year ended December 31, 2002 was 55.0%, compared to 47.3% for 2001. Excluding the write-down of inventory in the third quarter of 2001, gross profit as a percentage of net sales was 52.7% for the year ended December 31, 2001. The increase in gross profit is principally due to reduced product costs at both Audio Book Club and Radio Spirits. The reduction in product costs is due to better buying, combined purchasing at both Audio Book Club and Radio Spirits and revisions in the mix of products and packaging at both Audio Book Club and Radio Spirits.

Advertising and promotion expenses for the year ended December 31, 2002 were $10.2 million. Advertising and promotion expenses for the year ended December 31, 2001 were $15.9 million of which, $4.0 million represented write-downs to deferred member acquisition costs. The decrease in reported advertising costs is principally due to lower expenditures relating to Audio Book Club new member acquisitions in 2002 as compared to 2001 and the write-down of deferred member acquisition costs in the third quarter of 2001 which resulted in lower amortization of new member acquisition costs in 2002 and thus lower reported advertising expense in 2002.

General and administrative expenses decreased $.3 million, or 2.7%, to $11.2 million for the year ended December 31, 2002 from $11.5 million for the prior comparable period. General and administrative expense decreases are principally attributable to reductions at Radio Spirits partially offset by an increase in bad debt expenses. Bad debt expenses increased $.3 million attendant with an increase in net sales at Audio Book Club. Bad debt expense as a percentage of net sales was 6.2% for the year ended December 31, 2002 as compared to 6.1% for the year ended December 31, 2001. In February 2002, we moved our Radio Spirits operation from Schaumburg, Illinois to our corporate and Audio Book Club offices in Cedar Knolls, New Jersey. In addition to giving us greater control over the operations, general and administrative expenses, other than bad debt expense, for our Radio Spirits division for the year ended December 31, 2002 declined by $.9 million as compared to the year ended December 31, 2001. At Radio Spirits, for the year ended December 31, 2002, we reduced payroll and related costs by $.5 million, office expenses by $.1 million, telephone expenses by .2 million and legal fees by $.1 million as compared to the year ended December 31, 2001.

Depreciation and amortization expenses decreased $3.9 million to $1.3 million for the year ended December 31, 2002 from $5.2 million for the year ended December 31, 2001. The decrease is principally attributable to the adoption of SFAS No. 142 "Goodwill and Other Intangible Assets" in 2002 and, to a lesser extent, certain intangible assets were fully amortized in 2001. SFAS No. 142 requires that an intangible asset that is acquired shall be initially recognized and measured based on our fair value. The statement also provides that goodwill should not be amortized, but shall be tested for impairment annually, or more frequently if circumstances indicate potential impairment, through a comparison of fair value to our carrying amount. Existing goodwill continued to be amortized through the year ended December 31, 2001 at which time amortization ceased. The amount of goodwill amortized during the year ended December 31, 2001 was $.5 million. Based on our review for goodwill impairment in 2002, the Company did not recognize any goodwill impairment in 2002 in accordance with SFAS No. 142.

During the fourth quarter of 2002, the Company reviewed the carrying amounts of our intangible assets and determined, based on decisions made in the fourth quarter of 2002, that the value of certain intangible assets could no longer be supported by anticipated future operations. Specifically, the Company made a strategic decision to no longer compete in the DVD market and accordingly wrote off the value of certain video and DVD rights it had acquired in the amount of $90,000. We also made the strategic decision in the fourth quarter of 2002 to discontinue future mailings to the Columbia House lists of members of other clubs. Accordingly, in the fourth quarter of 2002, the Company wrote off the unamortized value of the Columbia House mailing agreement of $986,000.

Interest expense for the year ended December 31, 2002 was $3.0 million for the year ended December 31, 2002 and $2.8 million for the year ended December 31, 2001. Included in interest expense is the amortization of debt discount resulting from the issuance of warrants and beneficial conversion features related to certain of our financings. The amount amortized was $.7 million and $.6 million for the years ended December 31, 2002 and 2001, respectively.

Net loss before income taxes for the year ended December 31, 2002 was $1.7 million as compared to a net loss before income taxes for the year ended December 31, 2001 of $22.6 million.

As a result of the series of strategic initiatives described above, our operations had improved. Although realization of net deferred tax assets is not assured, we determined in 2001, based on our improved operations, that it is more likely than not that a portion of our deferred tax asset relating to temporary differences between the tax bases of assets or liabilities and their reported amounts in the financial statements will be realized in future periods. Accordingly we reduced the valuation allowance for deferred tax assets in the amount of $17.2 million and recorded an income tax benefit.

During then year ended December 31, 2002, we utilized $550,000 of the $17.2 million deferred tax asset recorded in 2001. Accordingly, we recorded an income tax expense of $550,000.

We accrued preferred stock dividends of $0.2 million on the outstanding 25,000 shares of Series A Preferred stock, which were issued in January 2002.

Net loss applicable to common shares for the year ended December 31, 2002 was $2.5 million, or $.18 per diluted share of common stock as compared to a net loss of $5.4 million, or $0.39 per diluted share of common stock for the year ended December 31, 2001.

LIQUIDITY AND CAPITAL RESOURCES

Historically, we have funded our cash requirements through sales of our equity and debt securities and borrowings from financial institutions and our principal shareholders. During 2003, we did not have sufficient cash to undertake marketing activities to the extent of historical levels. For the year ended December 31, 2003, we spent $2.1 million to attract new Audio Book Club members, a reduction of $6.2 million, or 74.7%, from the amount spent to attract new members of $8.3 million during the year ended December 31, 2002, principally due to the lack of necessary funds. As a result, our member and customer bases eroded and our revenues declined significantly. We currently do not have sufficient funds to market to attract new members and customers to maintain our member and customer bases and have conducted only minimal tests of new Internet marketing initiatives in 2004. We will require additional financing to conduct sufficient marketing activities to maintain and rebuild our member and customer bases. If we do not obtain the funds necessary to increase our advertising to acquire new members to offset member attrition and/or expand our existing membership and customer bases, our revenue will continue to decline, which will continue to negatively impact our performance and could ultimately impair our ability to continue as a going concern.

Our revolving line of credit matures on September 30, 2004, an additional $10.8 million is due upon demand of the holders of notes which may be made at various times during 2004 following the repayment of the line of credit and an additional $4.3 million under promissory notes is due in the fourth quarter of 2004. We are required to make monthly payments of principal on the line of credit of $106,666 in February through August 2004 We currently do not have sufficient funds to repay our debt as it becomes due and are actively seeking to obtain other financing to replace the debt or obtain an extension of the maturities. If we do not have the necessary extensions or replacement financings, we will be in default on our indebtedness.

Operating Activities
We have implemented a series of initiatives to increase cash flow. While these initiatives and the significant reduction in marketing expenses increased cash provided by operating activities in 2003, we cannot sustain our operations without increasing marketing expenses. We require additional financing to repay debt and to fund the maintenance of operations, working capital or other related uses. Without additional capital, we do not have the funds to meet our short-term needs. We are currently exploring a number of alternatives, including raising additional debt or equity, refinancing or extending our existing debt and selling certain assets to fund our long and short-term needs.

For the year ended December 31, 2003, our cash increased by $.3 million, as we had cash provided by operating activities of $1.6 million and we had cash used in investing activities of $.3 million and in financing activities of $1.0 million.

During 2003, we generated cash from operations of $1.6 million, including the repayment of accounts payable and accrued expenses of $5.4 million. This increase in cash from operations was due to principally to our reducing new member marketing dramatically in 2003 as compared to 2002.

Net cash provided by operating activities principally consisted of our net loss applicable to common shares of $6.9 million, decreased by depreciation and amortization expenses of $.3 million, amortization of deferred financing costs and debt discount of $.6 million, non-current accrued interest and dividends payable $1.2 million, write-offs of assets related to a terminated marketing program of $.7 million, income tax expense of $1.5 million, stock related non-cash compensation of $.1 million; decreases in accounts receivable, inventory, royalty advances and prepaid expenses and other current assets of $4.2 million, $.9 million, $.2 million and $.3 million, respectively and a net reduction in deferred member acquisition costs of $3.8 million. Net cash provided by operations was reduced by reductions in accounts payable and accrued expenses of $5.4 million.

The decrease in accounts receivable is principally due to reduced sales at both our Audio Book Club and our wholesale Radio Spirits sales. We also have reserved bad debts based on our experience in 2003, which was much higher than in previous years, due to the significant increase in 2002 of ABC members recruited in Bill Me offers from the internet and Audio Passages members. We have discontinued Internet Bill Me offers until we have tested new credit screening methods and have discontinued our Audio Passages audiobook club. We believe that these steps will assist us in reducing our bad debt rate. The reduction in inventory is a result of lower sales, which require less inventory and the aggressive sale of slower moving items old-time radio products at heavily discounted prices in remainder sales. We have also provided a reserve for obsolescence for our Audio Passages product because of our discontinuing the operation. The decrease in royalty advances is principally due to increased royalty expenses, since we sold less new member units, the audiobooks we sold were at higher royalty rates and we also reserved $.4 million for advances we do not expect to recover principally due to lower sales at Audio Book Club due to fewer members. The decrease in prepaid expenses was principally the result of not mailing a direct mail campaign to acquire new members in our Audio Book Club in December 2003 or January 2004. The decrease net deferred member acquisition costs is directly related to the substantial reduction in new member advertising. We used substantially all of the cash generated from operations to reduce accounts payable resulting in a decrease in accounts payable and accrued expenses of $5.4 million during the year ended December 31, 2003.

Investing Activities
Cash used in investing activities was for the acquisition of fixed assets of $0.1 million, principally computer equipment, and remaining payments of $0.25 million to Great American Audio for the 2002 acquisition of certain of Great American Audio assets including the license to The Shadow programs.

Financing Activities
During the year ended December 31, 2003, we repaid $1.6 million under our senior credit facility and the maturity of the senior credit facility was extended to September 30, 2004, subject to monthly principals payments of $106,667 through August 2004.

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On May 7, 2003, we sold 3,350 shares of a newly created Series B Stock with a liquidation preference of $100 per share for $335,000. Of the total sold, 1,400 shares ($140,000) were purchased by Carl Wolf, Chairman and a director of MediaBay, and 200 shares ($20,000) were purchased by John Levy, Executive Vice President and Chief Financial Officer of MediaBay. The holders of shares of Series B Stock are entitled to receive dividends at the rate of $9.00 per share, payable quarterly, in arrears, in cash on each March 31, June 30, September 30 and December 31; provided that payment will accrue until we are permitted to make such payment in cash under the Credit Agreement.

The Series B Stock is convertible into shares of common stock at a conversion rate equal to a fraction, (i) the numerator of which is equal to the number of Series B Stock times $100 plus accrued and unpaid dividends though the date of conversion and (ii) the denominator is the $0.77.

In the event of a liquidation, dissolution or winding up of MediaBay, the holders of Series B Stock shall be entitled to receive out of the assets of MediaBay, a sum in cash equal to $100.00 per share before any amounts are paid to the holders of MediaBay common stock and on a pari passu with the holders of the Series A Preferred Stock. The holders of Series B Stock shall have no voting rights, except as required by law and except that the vote or consent of the holders of a majority of the outstanding shares of Series B Stock, voting separately as a class, will be required for any amendment, alteration or repeal of the terms of the Series B Stock that adversely effects the rights, preferences or privileges of the Series B Stock.

On June 16, 2003, ABC entered into a settlement agreement with respect to a lawsuit in which ABC was the plaintiff and arising out of an acquisition made by ABC. Pursuant to the settlement agreement, ABC received $350,000 in cash, the return for cancellation of 325,000 shares of MediaBay common stock issued in connection with the acquisition and the termination of put rights granted to the seller in the acquisition with respect to 230,000 of the shares (put rights with respect to the remaining 95,000 shares had previously terminated). The termination of the puts rights terminated a $3.45 million future contingent obligation of MediaBay and results in a corresponding increase in stockholders' equity.

The calculation of the settlement of litigation is as follows:

Termination of contingent put rights	$3,450,000
Return for cancellation of 325,000 shares of common stock	247,000
Legal and other costs incurred in connection with the litigation, net of cash received of $350	690,000
Net settlement of litigation recorded in Contributed Capital	$3,007,000

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On October 1, 2003, we completed a $1,065,000 financing consisting of the notes due October 1, 2004. The notes bear interest at 18%, provide for accrual of interest to maturity and have no prepayment penalty. In connection with the issuance of the notes, we issued to the investors, five year warrants to purchase 266,250 shares of our common stock at an exercise price of $0.80. We have also agreed to issue the investors warrants to purchase an additional 266,250 shares of MediaBay common stock on April 1, 2004, if the notes have not been repaid. Carl Wolf, and Huntingdon, Inc., a company wholly owned by Norton Herrick, each purchased a $100,000 note in the offering. In connection with the financing, Norton Herrick and Huntingdon agreed with the holders of the notes, that upon the occurrence and continuance of an event of default under the notes, to the extent Mr. Herrick or Huntingdon received any payment on account of the secured indebtedness of our company held by them, they would remit such amounts to the holders of the notes an a pro rata basis until the notes are paid in full.

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On January 29, 2004, we issued $4,000,000 aggregate principal amount of promissory notes (the "2004 Notes") and warrants to purchase 2,352,946 shares of common stock (the "Investor Warrants") to 13 institutional and accredited investors. The 2004 Notes are due on the earlier of (i) April 30, 2005, (ii) such date on or after July 1, 2004 at such time as all of the our indebtedness under our existing credit facility is either repaid or refinanced or (iii) the consummation by us of a merger, combination or sale of all or substantially all of our assets or the purchase by a single entity, person or group of affiliated entities or persons of 50% of our voting stock. The 2004 Notes bear interest at the rate of 6%, increase to 9% on April 28, 2004 and 18% on July 27, 2004. In connection with this offering, Norton Herrick and Huntingdon entered into a letter agreement with the purchasers of the 2004 Notes pursuant to which they granted to the holders of the 2004 Notes in the event of an Event of Default (as defined in the 2004 Notes) the rights to receive payment under certain secured indebtedness owed by us to Norton Herrick and Huntingdon and to exercise their rights under security agreements securing such secured indebtedness. Pursuant to the letter agreement, Norton Herrick and Huntingdon also executed Powers of Attorney in favor of a representative of the 2004 Note holders pursuant to which such representative may, following an Event of Default, take actions necessary to enforce the 2004 Note holders rights under the letter agreement, including enforcing Norton Herrick's and Huntingdon's rights under the security agreements. In consideration for Huntingdon's consent to the financing and agreements to upon receipt of shareholders' approval we reduced the conversion price of $1,150,000 principal amount of convertible promissory notes held by Huntingdon from $2.00 to $1.27 and $500,000 principal amount of convertible promissory notes held by Huntingdon from $1.82 to $1.27.

On April 12, 2004, the principal amount of the 2004 Notes, automatically converted into 5,333,333 shares of our common stock at the rate of one share of common stock at $0.75. In addition, accrued interest accrued interest in the amount of approximately $49,000 converted into 64,877 shares of our common stock.

In connection with the offering, we issued to Rockwood, Inc. ("Rockwood"), the placement agent, and a broker warrants to purchase an aggregate of 245,000 shares of Common Stock (the "Initial Agent Warrants"), and agreed to issue to Rockwood, if and only if we obtain shareholder approval, warrants to purchase an additional 500,884 shares of Common Stock (the "Additional Agent Warrants" and, together with the Initial Agent Warrants, the "Agent Warrants") as partial consideration for Rockwood's services as placement agent. The Investor Warrants and Rockwood Warrants are exercisable until January 28, 2009 at an exercise price of $1.28 per share. The Additional Agent Warrants will become exercisable upon, and only if, our shareholders approve the Proposal.

Indebtedness

Following is a summary of our indebtedness to our creditors:

Credit Facility
As of April 12, 2004, we had approximately $1,386,667 of indebtedness outstanding under the Amended and Restated Credit Agreement dated as of October 3, 2002, as amended, by and among MediaBay and Radio Spirits, Inc. and Audio Book Club, Inc., wholly-owned subsidiaries of the MediaBay, as co-borrowers, and ING (U.S.) Capital LLC, as administrative agent, and the other lenders named therein (the "Credit Agreement"). The maturity date of the Credit Agreement is September 30, 2004; provided however, that we are required to make monthly payments of principal of $106,667 through August 2004. The maturity of the Credit Agreement automatically extends to March 31, 2005 if the notes held by ABC Investment LLC and the holders of the notes issued in October 2003 extend the maturity of their notes by April 15, 2004 to June 30, 2005. We are not permitted to make any additional borrowings under the Credit Agreement. The interest rate on the credit facility is equal to the prime rate plus 2 1/2%. We granted the lenders under the Credit Agreement a security interest in substantially all of our assets and the assets of our subsidiaries and pledged the stock of our subsidiaries.

We are required to maintain minimum EBITDA, as defined below, of $7,000,000 for the period beginning on January 1, 2001 and ending prior to March 31, 2004. Under the Credit Agreement, "EBITDA" means, for any period, the sum of (i) net income, (ii) interest expense, (iii) income tax expense, (iv) depreciation expense, (v) extraordinary and nonrecurring losses and (vi) amortization expense, less extraordinary and nonrecurring gains (in each case, determined in accordance with generally accepted accounting principles) plus adjustments for (x) the pro forma effect of any Permitted Acquisition (as defined in the Credit Agreement) and (y) non-cash stock compensation; provided that EBITDA shall be adjusted for the effect of treating our advertising expense and new member acquisition costs as expensed as incurred. We were in compliance with this covenant at December 31, 2003.

In addition to limiting our ability to incur additional indebtedness, the Credit Agreement prohibits us from, among other things:

- merging into or consolidating with another entity;
- selling all or substantially all of our assets;
- declaring or paying cash dividends;
- raising additional financing, with certain exceptions, without repaying a portion of the debt and
- materially changing the nature of our business.

We are currently seeking to refinance or extend this debt. Historically, we have been able to extend the maturity of this debt.

Notes Held by Norton Herrick
Norton Herrick holds a $1,984,250 principal amount Convertible Senior

Subordinated Promissory Note due September 30, 2007, except that the holder has the right to demand repayment of the unpaid principal balance of, and interest on, the note at any time on or after the later of (i) December 31, 2004 and (ii) the date on which we have repaid all of our obligations under the Credit Agreement. This note is the remaining portion held by Norton Herrick of a $15 million subordinated note entered into between Norton Herrick and MediaBay on December 31, 1998.

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Interest on this note accrues at the rate of 11% per annum and is payable on a monthly basis, at the holder's option, in cash or common stock; provided, however, that cash interest accrues until 10 days after we have paid all of our obligations under the Credit Agreement. This note is convertible into shares of common stock at the rate of $.56 per share, subject to adjustment for below conversion price issuances. This note is secured by a second lien on the assets of Radio Spirits.

We are prohibited from incurring additional indebtedness (with exceptions), selling all or substantially all of our assets and materially changing the nature of our business without the prior written consent of the holder of this note. While Mr. Herrick has, in the past, provided his consent to our incurring additional indebtedness, he is not required to do so, and the requirement that he provide his consent could be a significant impediment in our ability to raise additional financing.

Notes held by Huntingdon Corporation

Huntingdon Corporation, a company wholly owned by Norton Herrick, holds the following promissory notes:

- $2,500,000 principal amount Convertible Senior Promissory Note (the "$2,500,000 Note") entered into on May 14, 2001;
- $800,000 principal amount Convertible Senior Subordinated Promissory Note (the "$800,000 Note") entered into on May 14, 2001;
- $500,000 principal amount Convertible Senior Promissory Note (the "$500,000 Note") entered into on February 22, 2002;
- $1,000,000 principal amount Convertible Senior Promissory Note (the "$1,000,000 Note") entered into on October 3, 2002;
- $150,000 principal amount Convertible Senior Promissory Note (the "$150,000 Note") entered into on October 10, 2002; and
- $350,000 principal amount Convertible Senior Promissory Note (the "$350,000 Note") entered into on November 15, 2002.

Each of the notes held by Huntingdon are due September 30, 2007, provided that the holder has the right, at any time on or after the date on which the Company has repaid all of our obligations under the Credit Agreement, to demand repayment of the unpaid principal balance of and interest on the note; provided, however that, with respect to the $800,000 Note, such demand can not be made until the ninetieth day after we have repaid all of our obligations under the Credit Agreement.

Each of the $2,500,000 Note and $500,000 Note bears interest at an annual rate equal to the prime rate plus 2%, the $800,000 Note bears interest at the rate of 12% per annum and each of the $1,000,000 Note, $150,000 Note and $350,000 Note bears interest at an annual rate equal to the prime rate plus 2 1/2%. Interest is payable under each note monthly, in arrears, in cash, or at the holder's option, in lieu of cash, in shares of common stock or in kind, provided, however, that cash interest accrues until 10 days after we have paid all of our obligations under the Credit Agreement. Interest accrues on unpaid interest under each note (since October 3, 2002 in the case of the $2,500,000 Note, the $500,000 Note and the $800,000 Note) at the respective interest rate of such note.

The $2,500,000 Note, and the $800,000 Note are convertible into shares of common stock at the rate of $.56 per share, subject to adjustment for below conversion price issuances of securities. The $500,000 Note is convertible at $2.00. Each of the $1,000,000 Note and the $150,000 Note is convertible into shares of common stock at the rate of $1.82 per share, and the $350,000 Note is convertible into shares of common stock at the rate of $1.25 per share. We agreed as consideration for Norton Herrick and Huntingdon consenting to the January 2004 financing and granting certain rights to investors in the January 2004 financings as discussed above, we would seek shareholder approval to reduce the conversion rate of $1,000,000 Note, the $150,000 Note and the $500,000 Note to $1.27. Our Board has determined to recommend to our shareholders to approve the foregoing and intends to submit a proposal for shareholder approval at our 2004 annual meeting of shareholders.

All of the notes held by Huntingdon are secured by a lien pari passu to the senior credit facility on substantially all of our assets and certain of our subsidiaries' assets, other than inventory, receivables and cash.

We are prohibited from incurring indebtedness (with exceptions), selling all or substantially all of our assets and materially changing the nature of our business without the prior written consent of the holder of the notes. While Huntingdon has, in the past, provided its consent to our incurring additional indebtedness, it is not required to do so, and the requirement that it provide its consent could be a significant impediment in our ability to raise additional financing.

Note held by N. Herrick Irrevocable ABC Trust (the "Trust")
The Trust holds a $500,000 principal amount 9% Convertible Senior Subordinated Promissory Note due September 30, 2007, except that the holder may demand repayment of the unpaid principal balance and interest on the note, commencing December 31, 2004, if we have repaid all of our obligations under the Credit Agreement.

This note is convertible into shares of common stock at the rate of $.56 per share, subject to adjustment for below conversion price issuances of securities. This note bears interest at the rate of 9% per annum. Interest is payable monthly, in arrears, in cash or, at the holder's option, shares of common stock; provided, however, that cash interest accrues until 10 days after we have repaid our obligations under the Credit Agreement. After October 3, 2002, interest accrues on unpaid interest at the interest rate of the note.

We are prohibited from incurring additional indebtedness (with exceptions), selling all or substantially all of our assets and materially changing the nature of our business without the prior written consent of the holder of this note. While the Trust has, in the past, provided its consent to our incurring additional indebtedness, the requirement that it provide its consent could be a significant impediment in our ability to raise additional financing.

Note held by ABC Investment LLC
ABC Investment LLC is a third party, which holds a $3.2 million principal amount

Senior Subordinated Promissory Note due December 31, 2004. This note is convertible into shares of common stock at the rate of $3.12 per share, subject to adjustment for below conversion price issuances of securities. This note bears interest at the rate of 9% per annum, quarterly, in arrears. We are prohibited from incurring additional indebtedness (with exceptions), selling all or substantially all of our assets and materially changing the nature of our business without the prior written consent of the holder of this note.

October 2003 Notes
On October 1, 2003, we issued $1,065,000 principal amount of notes due October 1, 2004. The notes bear interest at the rate of 18%, provide for accrual of interest to maturity and have no prepayment penalty. We also agreed to issue the investors warrants to purchase an additional 266,250 shares of MediaBay common stock on April 1, 2004, if the notes have not been repaid. The notes are due on October 1, 2004, however, if we raise more than $5.0 million in financing prior to the maturity date of the notes, the maturity date of the notes is accelerated. Purchasers of notes included Carl Wolf and a company wholly owned by Norton Herrick.

January 2004 Notes
On January 29, 2004, we issued $4,000,000 aggregate principal amount of notes are described above.

Commitments
$(000,s)

Contractual Obligations	Total	Less than 1 Year	1-3 Years
		Payments Due by Period	
Debt Obligations	$ 17,770	$ 17,770	$ --
Capital Lease Obligations	71	53	18
Operating Lease Obligations	964	163	385
Purchase Obligations	1,487	459	575
Other Long Term Liabilities Reflected on the Registrant's Balance Sheet Under GAAP	1,331	551	780
Total	$ 21,623	$ 18,996	$ 1,758

Consulting Agreement
Effective December 31, 2003, we agreed with Norton Herrick to terminate a two-year consulting agreement with XNH Consulting Services, Inc. ("XNH"), a company wholly-owned by Norton Herrick. In connection with the termination, we agreed to pay XNH a fee of $7,500 per month for 16 months commencing on January 1, 2004 and to provide Mr. Herrick with health insurance and other benefits applicable to our officers to the extent such benefits may be provided under our benefit plans. The termination agreement provides that the indemnification agreement with Mr. Herrick entered into on November 15, 2002 pursuant to which, we agreed to indemnify Mr. Herrick to the maximum extent permitted by the corporate laws of the State of Florida or, if more favorable, our Articles of

Incorporation and By-Laws in effect at the time the agreement was executed, against all claims (as defined in the agreement) arising from or out of or related to Mr. Herrick's services as an officer, director, employee, consultant or agent of ours or any subsidiary or in any other capacity shall remain in full force and effect and to also indemnify XNH on the same basis. In connection with the termination agreement, Herrick and XNH agreed to extend the non-competition and nondisclosure covenants of the XNH consulting agreement until December 31, 2006.

Employment Agreements
We have commitments pursuant to employment agreements with our officers. Our minimum aggregate commitments under such employment agreements are approximately $0.5 million, $0.4 million and $80,000 during 2004, 2005 and 2006, respectively.

Termination and Severance Agreements
Our minimum aggregate commitments under settlement payments under employment agreements and a consulting agreement are $201,000 in 2004 and $30,000 in 2005.

Licensing Agreements
We have numerous licensing agreements for both audiobooks and old-time radio shows with terms generally ranging from one to five years, which require the Company to pay, in some instances, non-refundable advances upon signing agreements, to be applied against future royalties. Our minimum aggregate commitments under existing licensing agreements are $459,000, $347,000 and $228,000 during 2004, 2005 and 2006, respectively.

Obligations to Seller in an Acquisition
In connection with an acquisition made in December 1998, we agreed to repurchase certain shares issued to the seller at various prices ranging from $7.00 to $15.00. The repurchase obligation would expire based on the stock reaching the repurchase price for a period of 10 consecutive trading days. We have asserted that the price targets were maintained and that the obligation has expired. The seller has disputed this assertion and asserts that the right to put 25,000 shares at a price of $14.00 per share beginning on December 31, 2003 and 50,000 shares at a price of $15.00 per share beginning on December 31, 2005. The seller has demanded the repurchase of the 25,000 shares for $350,000.

Recent Accounting Pronouncements
In April 2002, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 145 ("SFAS 145"), "Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections," which is effective for fiscal years beginning after May 15, 2002, with earlier application encouraged. Under SFAS 145, gains and losses from extinguishment of debt will no longer be aggregated and classified as an extraordinary item, net of related income tax effect, on the statement of earnings. The adoption of SFAS 145 had no impact on our financial position or results of operations.

In June 2002, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 146 ("SFAS 146"), "Accounting for Costs Associated with Exit or Disposal Activities," which is effective for exit or disposal activities that are initiated after December 31, 2002, with early application encouraged. SFAS 146 requires recognition of a liability for the costs associated with an exit or disposal activity when the liability is incurred, as opposed to when the entity commits to an exit plan as required under EITF Issue No. 94-3. SFAS 146 will primarily impact the timing of the recognition of costs associated with any future exit or disposal activities. The adoption of SFAS 146 had no impact on our financial position or results of operations.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock Based Compensation", which amends SFAS No. 123 to provide alternative methods of transaction for an entity that voluntarily changes to the fair value method of accounting for stock based compensation. It also amends the disclosure provisions of SFAS No. 123 to require prominent disclosure about the effects on reported net income of an entity's accounting policy decisions with respect to stock based employee compensation. Finally, SFAS No. 148 amends APB Opinion No. 28, "Interim Financial Reporting", to require disclosure of those effects in interim financial statements. SFAS No. 148 is effective for fiscal years ended after December 15, 2002, but early adoption is permitted. Accordingly, we have adopted the applicable disclosure requirements of this Statement within this report. The adoption of SFAS No. 148 did not have a significant impact on our financial disclosures.

In November 2002, the FASB issued interpretation No. ("FIN") 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," which requires that guarantees within the scope of FIN 45 issued or amended after December 31, 2002, a liability for the fair value of the obligation undertaken in issuing the guarantee, be recognized at the inception of the guarantee. The effective date for this FIN 45 is for fiscal years ending after December 15, 2002. The adoption of FIN 45 had no impact on our financial position or results of operations.

In January 2003, the FASB issued FIN 46, "Consolidation of Variable Interest Entities," which is effective for interim periods beginning after December 15, 2003. This interpretation changes the method of determining whether certain entities should be included in our consolidated financial statements. An entity is subject to FIN 46 and is called a variable interest entity ("VIE") if it has (1) equity that is insufficient to permit the entity to finance its activities without additional subordinated financial support from other parties, or (2) equity investors that cannot make significant decisions about the entity's operations or that do not absorb the expected losses or receive the expected returns of the entity. All other entities are evaluated for consolidation under SFAS No. 94, "Consolidation of All Majority-Owned Subsidiaries." A VIE is consolidated by its primary beneficiary, which is the party involved with the VIE that has a majority of the expected losses or a majority of the expected residual returns or both. We are currently evaluating FIN 46 and believe that it will have no impact on our financial position or results of operations.

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement 33 on Derivative Instruments and Hedging Activities", which amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities that fall within the scope of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities". SFAS No. 149 amends SFAS No. 133 regarding implementation issues raised in relation to the application of the definition of a derivative. The amendments set forth in SFAS No. 149 require that contracts with comparable characteristics be accounted for similarly. This Statement is effective for contracts entered into or modified after June 30, 2003, with certain exceptions, and for hedging relationships designated after June 30, 2003. The adoption of SFAS No. 149 did not have a material impact on our financial position or results of operations.

On May 15, 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS 150 provides guidance on classification and measurement of certain financial instruments with characteristics of both liabilities and equity. We reclassified certain items to debt as a result of the SFAS 150.

Net Operating Losses
Our federal net operating loss carryforwards expire beginning in 2018. Under Section 382 of the Internal Revenue Code of 1986, utilization of prior net operating losses is limited after an ownership change, as defined in Section 382, to an annual amount equal to the value of the corporation's outstanding stock immediately before the date of the ownership change multiplied by the long-term tax exempt rate. The additional equity financing we obtained in 2000 may result in an ownership change and, thus, may limit our use of our prior net operating losses. In the event we achieve profitable operations, any significant limitation on the utilization of net operating losses would have the effect of increasing our tax liability and reducing net income and available cash reserves. We are unable to determine the availability of net operating losses since this availability is dependent upon profitable operations, which we have not achieved in prior periods. We have provided a full valuation allowance for our net operating loss carryforwards.

Audit Committee Approval of Non-Audit Services
In accordance with Section 10A(i)(2) of the Securities Exchange Act of 1934, as added by Section 202 of the Sarbanes-Oxley Act of 2002, we are responsible for disclosing any non-audit services approved by our Audit Committee (the "Committee") to be performed by Amper, Politziner & Mattia ("APM"), our external auditor. Non-audit services are defined as services other than those provided in connection with an audit or a review of our financial statement. During the year ended December 31, 2003, we did not engage APM for any non-audit services.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK
We are exposed to market risk for the impact of interest rate changes. As a matter of policy, we do not enter into derivative transactions for hedging, trading or speculative purposes.

Our exposure to market risk for changes in interest rates relate to our long-term debt. As of December 31, 2003, interest on $3.0 million of our debt is payable at the rate of the prime rate plus 2.0% and interest on $3.0 million of our long-term debt is payable at the rate of the prime rate plus 2.5%. If the prime rate were to increase, our interest expense would increase, however a hypothetical 10% increase in interest rates, from approximately 6% to 6.6%, would not have had a material impact on our fair values, cash flows or earnings for either 2003 or 2002. All of our other debt is at fixed rates of interest.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA
The financial statements appear in a separate section of this report following Part IV.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES
As of the end of the period covered by this report, an evaluation was carried out under the supervision and with the participation of our management, including the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), of the effectiveness of our disclosure controls and procedures. Based on that evaluation, the CEO and CFO have concluded that our disclosure controls and procedures are effective at the reasonable assurance level to timely alert

them of information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934. During the quarter ended December 31, 2003 there were no changes in our internal controls over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The directors, executive officers and other key employees of our company are as follows:

NAME	AGE	POSITION
Carl T. Wolf	60	Chairman and Director
Jeffrey Dittus	37	Chief Executive Officer and Director
Howard Herrick	39	Executive Vice President and Director
John F. Levy	48	Executive Vice President and Chief Financial Officer
Robert Toro	39	Senior Vice President of Finance
Richard J. Berman	61	Director
Paul D. Ehrlich	59	Director
Mark P. Hershhorn	54	Director
Joseph R. Rosetti	70	Director

Carl T. Wolf, 60, as of May 2003 is our Chairman. Mr. Wolf has been a director of MediaBay since March 1998. Mr. Wolf is the managing partner of the Lakota Holdings LLC. Mr. Wolf was formerly Chairman of the Board, President and Chief Executive Officer of Alpine Lace Brands, Inc. Mr. Wolf founded Alpine Lace and predecessors and had been the Chief Executive Officer of each of them since the inception of Alpine Lace in 1983. Mr. Wolf became a director of Alpine Lace shortly after its incorporation in February 1986.

Jeffrey Dittus, 37, as of January 2004, is our Chief Executive Officer. From December 2001 to January 2004, Mr. Dittus was founder and managing director of Kauri Capital LLC, a boutique merchant bank. From September 1999 to November 2001, Mr. Dittus was co-founder and Chief Executive Officer of IT Capital Limited, a publicly listed venture capital firm on the Australian and New Zealand stock exchanges. From November 1998 to November 1999, Mr. Dittus was Vice President Investments for Mellon Ventures; a captive private equity partnership of Mellon Bank. From November 1995 to November 1998, Mr. Dittus was Vice-President Corporate Development and Managing Director - New Zealand/Australia for National Media Corporation, a large direct response television marketer.

Howard Herrick, 39, is our co-founder and has been our Executive Vice President, and a director since our inception. Since 1988, Mr. Herrick has been an officer of The Herrick Company, Inc. Mr. Herrick is also an officer of the corporate general partners of numerous limited partnerships, which acquire, finance, market, manage and lease office, industrial, motel and retail properties; and which acquire, operate, manage, redevelop and sell residential rental properties.

John F. Levy, 48, joined us in November 1997 and has served as our Executive Vice President and Chief Financial Officer since January 1998. Prior to joining us, Mr. Levy had previously served as Chief Financial Officer of both public and private entertainment and consumer goods companies. Mr. Levy is a Certified Public Accountant with nine years experience with the national public accounting firms of Ernst & Young, Laventhol & Horwath and Grant Thornton.

Robert Toro, 39, has been our Senior Vice President of Finance since July 1999, Chief Financial Officer of our Audio Book Club division since November 2001 and an employee since April 1999. Before joining us, Mr. Toro was Senior Vice President of AM Cosmetics Co. and had previously served in senior financial positions in both public and private entertainment and publishing companies. From 1992 through early 1997, Mr. Toro served in various senior financial positions with Marvel Entertainment Group, Inc., a publicly traded youth entertainment company. Mr. Toro is a Certified Public Accountant with six years of experience with the national public accounting firm of Arthur Andersen where he was employed immediately prior to joining Marvel Entertainment Group.

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Richard J. Berman, 61, became a director in June 2003. Mr. Berman has over 30 years of experience in venture capital and mergers and acquisitions. He is currently a Director of International Microcomputer Software, Inc. a publicly traded software company, the Internet Commerce Corporation, a publicly traded Internet supply chain company, NexMed, a publicly traded life sciences company, GVI Security Solutions, Inc., a provider of video surveillance solutions to the retail, business-to-business, professional, and homeland security market segments and is currently Chairman of the KnowledgeCube Group, a venture capital firm, and Candidate Resources Inc., a leading manager of human resource websites. Mr. Berman started and managed the mergers and acquisitions and private equity groups of Bankers Trust as Senior Vice President. Mr. Berman has also invested in and managed over 20 companies, including as Chairman of Prestolite Battery, Inc., Boston Proper, Inc. and Internet Commerce Corporation. Mr. Berman received his B.S. and M.B. A. in Finance from New York University, a J.D. from Boston College Law School and a degree in International Law from Hague Academy of International Law.

Paul D. Ehrlich, 59, has been a director since May 2001. Mr. Ehrlich is a Certified Public Accountant and tax and financial consultant. Since August 2000, Mr. Ehrlich has been a Partner with Edwards & Topple, LLP as well as President of Paul D. Ehrlich, CPA, P.C., a tax and financial consulting corporation. From 1981 to August 1, 2000, Mr. Ehrlich was a shareholder, tax specialist and director of Personal Financial Services of Feldman Sherb & Co., P.C. Mr. Ehrlich has served on the Boards of Directors of several companies and is a member of the American Institute of Certified Public Accountants, the New York State Society of Certified Public Accountants (appointed committee member), and the International Association for Financial Planning.

Mark P. Hershhorn, 54, has been a director since February 2003. Mr. Hershhorn is currently President and CEO of CKS & Associates and CEO for Midwest Real Estate Investment LLC, real estate development firms specializing in renovation and rehabilitation of apartment buildings in urban areas. Mr. Hershhorn was formerly President, CEO and a Director of National Media Corporation, a publicly held transactional television marketing company. Prior to National Media Corporation, Mr. Hershhorn served as Senior Vice President of Food Operations and Joint Ventures for NutriSystems, Inc. Mr. Hershhorn also served as Chief Financial Officer, Treasurer, Vice President and Director of The Franklin Mint, a global direct marketing company operating in ten countries. Mr. Hershhorn is a member of the Graduate Executive Board of the Wharton Graduate Division of the University of Pennsylvania and an active participant in the Wharton School Mentoring program. He is also Vice Chairman of the Board of Overseas and Executive Committee of the Rutgers University Foundation, a member of the Rutgers University Board of Trustees, Chairman of the Executive Committee of Rutgers University Scarlet R Club, Chairperson of the Rutgers University Annual Fund, a member of the Dean's Advisory Council for Rutgers College and a member of Rutgers University President's Council.

Joseph R. Rosetti, 70, has been a director of MediaBay since December 2002. Mr. Rosetti has been President of SafirRosetti, an investigative and security firm owned by Omnicom Group, Inc since December 2001. Prior to forming SafirRosetti, Joseph R. Rosetti was the Vice Chairman of Kroll Associates. As Vice Chairman, he had responsibility for Corporate Security/Crisis Management, which provides industry and professional organizations with preventive measures to combat corporate and financial crimes. From 1971 to 1987 he had worldwide responsibility at IBM for security programs in physical security, investigations, personnel security, trade secret protection, information asset security, real and movable and financial asset security and Department of Defense Security. Mr. Rosetti was a member of the U.S. National Chamber of Commerce Crime Reduction Panel and was Staff Director for the Conference of the National Commission on Criminal Justice Standards and Goals, a member of the private Security Task Force to the National Advisory Committee on Criminal Justice Standards and Goals and Chairman of the American Management Association's Council on Crimes against Business. Prior to joining IBM, Mr. Rosetti was the Northeast Director for the Law Enforcement Assistance Administration of the U.S. Department of Justice and a Special Agent, Group Supervisor, and Special Assistant to the Assistant Commissioner for Compliance in the Intelligence Division, U.S. Treasury Department. Mr. Rosetti is also a director of GVI Security Solutions, Inc., a provider of video surveillance solutions to the retail, business-to-business, professional, and homeland security market segments.

Our Board of Directors is classified into three classes, each with a term of three years, with only one class of directors standing for election by the shareholders in any year. Paul Ehrlich and Joseph Rosetti are Class I directors and will stand for re-election at the 2004 annual meeting of shareholders. Jeffrey Dittus and Mark Hershhorn are Class II directors and stand for re-election at the 2005 annual meeting of shareholders. Richard Berman, Howard Herrick and Carl Wolf are Class III directors and stand for re-election at the 2006 annual meeting of shareholders. Our executive officers serve at the direction of the Board and until their successors are duly elected and qualified.

COMPLIANCE WITH SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPANIES

Section 16(a) of the Exchange Act requires our officers, directors, and persons who own more than 10% of a registered class of our equity securities, to file reports of ownership and changes in ownership with the Securities and Exchange Commission. Officers, directors, and greater than 10% shareholders are required by Securities and Exchange Commission regulations to furnish us with copies of all forms that they file pursuant to Section 16(a).

Based solely upon our review of the copies of such forms that we received, we believe that, during the year ended December 31, 2003, all filing requirements applicable to our officers, directors, and greater than 10% shareholders were complied with, except that Richard Berman, Carl Wolf, Stephen McLaughlin, Robert Toro and Norton Herrick each filed a Form 4 related to one transaction late.

AUDIT COMMITTEE

We have established an Audit Committee of the Board of Directors, which currently consists of Messrs. Ehrlich, Hershhorn and Rosetti, each of whom is an "independent" director as defined under the rules of the National Association of Securities Dealers, Inc. Mr. Ehrlich serves as Chairman. The Board has determined that Messrs. Ehrlich, Hershhorn and Rosetti qualify as "financial experts" under federal securities laws.

CODE OF ETHICS

In March 2004, we adopted a written code of ethics that applies to our principal executive officer, principal financial officer, principal accounting officer other executive officers and persons performing similar functions. We will provide a copy of our code of ethics without charge upon written request addressed to MediaBay, Inc., 2 Ridgedale Avenue, Cedar Knolls, New Jersey 07927, Attention: Investor Relations. We will disclose any amendment or waiver of this code on a Current Report on Form 8-K.

ITEM 11. EXECUTIVE COMPENSATION

The following table discloses, for the periods indicated, compensation paid to our Chief Executive Officer and each of the four most highly compensated executive officers (the "Named Executives").

SUMMARY COMPENSATION TABLE

	ANNUAL COMPENSATION			LONG-TERM COMPENSATION A SECURITIES UND
NAME AND PRINCIPAL POSITION	YEAR	SALARY	BONUS	OPTIONS/SAR'
Ronald Celmer Former Chief Executive Officer (1)	2003	$ 85,608	$ --	1,500,000
Hakan Lindskog Former Chief Executive Officer (2)	2003	230,091	25,000	--
	2002	317,187	45,000	200,000
	2001	264,063	50,000	175,000
John F. Levy Executive Vice President and Chief	2003	190,000	35,705	60,241
	2002	181,414	17,500	50,000
Financial Officer	2001	180,000	17,500	--
Steven M. McLaughlin Former Executive Vice President and	2003	140,417	10,000	40,000
	2002	188,684	--	10,000
Chief Technology Officer (3)	2001	178,750	--	--
Robert Toro Senior Vice President Finance	2003	185,000	5,223	216,145
	2002	176,752	18,500	--
	2001	159,087	17,500	50,000
HOWARD HERRICK Executive Vice President	2003	175,000	12,500	117,000
	2002	154,167	15,000	100,000
	2001	150,000	30,000	100,000
Carl T. Wolf Chairman (4)	2003	135,000	--	585,000
	2002	15,688	--	645,000
	2001	--	--	35,000

(1) Ronald Celmer was employed as Chief Executive Officer of MediaBay, Inc. from August 15, 2003 through January 5, 2004. In connection with the termination of his employment, we paid severance of $56,250 in six semi-monthly payments commencing January 15, 2004.

(2) Hakan Lindskog was employed as Chief Executive Officer of MediaBay, Inc. from January 1, 2003 through August 13, 2003. In connection with the termination of his employment, we agreed to pay severance of $145,833 in semi-monthly payments from August 15, 2003 through January 15, 2004.

(3) Stephen McLaughlin resigned as Executive Vice President and Chief Technology Officer of MediaBay, Inc. on September 15, 2003. In connection with the termination of his employment, we agreed to pay severance of $146,667 in semi-monthly payments commencing September 30, 2003 and ending October 15, 2004.

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(4) Carl Wolf became Co-Chairman on November 15, 2002 and was named Chairman on May 1, 2003.

The following table discloses options granted during the fiscal year ended December 31, 2003 to the Named Executives:

Option/SAR Grants in Fiscal Year Ending December 31, 2003:

NAME	NUMBER OF SHARES UNDERLYING OPTIONS GRANTED	% OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN FISCAL YEAR	EXERCISE PRICE ($/SHARE)	EXPIRATION DATE	PO REALI AT ASSUME STOCK PR FOR 5% ($)
Ronald Celmer (1)	250,000	8%	$0.80	02/10/2009	$48,556
Ronald Celmer (1)	250,000	8%	0.80	08/10/2009	54,618
Ronald Celmer (1)	250,000	8%	1.00	02/10/2010	10,984
Ronald Celmer (1)	250,000	8%	1.00	08/10/2010	17,349
Ronald Celmer (1)	250,000	8%	1.25	02/10/2011	--
Ronald Celmer (1)	250,000	8%	1.25	08/10/2011	--
Hakan Lindskog	--	--	--	--	--
John F. Levy	60,241	2%	0.85	09/15/2008	14,147
Howard Herrick	39,000	1%	1.39	12/01/2009	18,800
Howard Herrick	39,000	1%	1.39	12/01/2009	22,450
Howard Herrick	39,000	1%	1.39	12/01/2009	26,283
Steven M. McLaughlin (2)	20,000	1%	1.50	02/15/2009	--
Steven M. McLaughlin (2)	20,000	1%	1.50	02/15/2010	--
Steven M. McLaughlin (2)	10,000	--	1.00	02/15/2005	--
Steven M. McLaughlin (2)	40,000	1%	1.50	02/15/2005	--
Robert Toro	36,145	1%	0.85	09/15/2008	6,182
Robert Toro	60,000	2%	1.02	11/14/2009	14,381
Robert Toro	60,000	2%	1.02	11/14/2009	18,160
Robert Toro	60,000	2%	1.02	11/14/2009	22,128
Carl Wolf	285,000	9%	0.73	08/11/2003	51,158

Carl Wolf	300,000	9%	1.36	12/4/2008	112,723

(1) Mr. Celmer's options were cancelled January 4, 2004.

(2) Mr. McLaughlin resigned September 15, 2003. The 40,000 options scheduled to expire on 02/15/2009 and 02/15/2010 expired on 12/15 /2003, 90 days after his resignation.

The following table sets forth information concerning the number of options owned by the Named Executives and the value of any in-the-money unexercised options as of December 31, 2003. No options were exercised by any of these executives during fiscal 2003.

Aggregated Option Exercises And Fiscal Year-End Option Values

NAME	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS AT DECEMBER 31, 2003		VALUE OF UNEXERC OPTIONS AT DEC
	EXERCISABLE	UNEXERCISABLE	EXERCISABLE
Ronald Celmer (1)	--	1,500,000	$ --
Hakan Lindskog	--	--	--
Steven McLaughlin	58,000	--	8,100
John F. Levy (2)	150,241	--	16,760
Howard Herrick (3)	600,000	117,000	66,000
Robert Toro	131,145	205,000	14,036
Carl T. Wolf (4)	1,022,500	285,000	108,950

(1) Mr. Celmer's options were cancelled January 4, 2004.
(2) 10,000 of Mr. Levy's options expired on January 1, 2004.
(3) 50,000 of Mr. Herrick's options expired on February 9, 2004.
(4) 7,500 of Mr. Wolf's options expired on March 18, 2004.

The year-end values for unexercised in-the-money options represent the positive difference between the exercise price of such options and the fiscal year-end market value of the common stock. An option is "in-the-money" if the fiscal year-end fair market value of the common stock exceeds the option exercise price. The closing sale price of our common stock on December 31, 2003 was $1.10.

DIRECTOR COMPENSATION
For the year ended December 31, 2003, for serving as an independent director, Mr. Hershhorn received $10,000 and Mr. Ehrlich received cash compensation of $7,500. During the year ended December 31, 2003, Mr. Berman received options to purchase 125,000 shares of our common stock; Mr. Ehrlich received options to purchase 70,0000 shares of our common stock; Mr. Hershhorn received options to purchase 90,000 shares of our common stock and Mr. Rosetti received options to purchase 50,000 shares of our common stock. Prior to his resignation from our Board of Directors, during the year ended December 31, 2003, the health

insurance premiums of Michael Herrick and his family and automobile leasing payments for Mr. Herrick's automobile were paid by us totaling $20,222 and received $200,000 as compensation under a consulting agreement. We have agreed to continue to pay the health insurance premiums for Mr. Herrick and his family and automobile leasing payments until September 2004.

For the year ending December 31, 2004, Mr. Ehrlich is expected to receive $10,000 and Mr. Hershhorn - $10,000. We are currently formulating our plans with respect to the grant of stock-based compensation to non-employee directors for the year ending December 31, 2004.

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EMPLOYMENT AGREEMENTS

On January 29, 2004,we entered into a 27-month employment agreement with Jeffrey Dittus. The agreement provides for a base annual salary of $225,000 per year, which will increase to a base salary of $250,000 per year if we consummate a minimum of $10 million in financing by June 30, 2004, of which the financing completed in January 2004 accounted for $4.0 million. Pursuant to the agreement, we granted to Mr. Dittus options to purchase 1.5 million shares of our common stock, which have exercise prices and vest as follows:

Options to Purchase	Exercise Price	Vesting Date
250,000 shares	$0.99	04/30/2004
250,000 shares	$0.99	07/30/2004
250,000 shares	$1.55	01/30/2005
250,000 shares	$1.55	07/30/2005
250,000 shares	$1.86	01/30/2006
250,000 shares	$1.86	04/30/2006

We entered into a two-year employment agreement with Carl T. Wolf on November 15, 2002. The agreement provides for a base salary of $135,000 during the first year of the agreement. Mr. Wolf's employment under the agreement automatically terminates on November 14, 2004, unless prior to such date, at least 75% of our Board of Directors vote affirmatively to continue Mr. Wolf's employment. Under the terms of the agreement, Mr. Wolf is required to devote at least 20 hours per week to our business and activities. Pursuant to the agreement, Mr. Wolf was granted options to purchase 570,000 shares of our common stock. Of the total options granted, options with respect to 285,000 shares have an exercise price of $1.25 and vested on November 15, 2003 and options with respect to 285,000 shares have an exercise price of $3.25 and vest on November 15, 2004. In the event of termination of employment under circumstances described in the employment agreement, including as a result of a change in control, we will be required to provide severance pay equal to the lesser of Mr. Wolf's base salary for the unexpired period of his employment under the agreement or one year's base salary.

We entered into a 38-month employment agreement with Howard Herrick dated October 30, 2002. The agreement provides for an annual base salary of $175,000 in the first year of the agreement and four percent increases in each succeeding year. Mr. Herrick's agreement also provides for a minimum annual bonus of $30,000, however for the year ended December 31, 2003, in order to conserve cash, we paid Mr. Herrick $12,000 and granted Mr. Herrick options to purchase 117,000 in partial payment of his bonus. Pursuant to the agreement, we granted to Mr. Herrick options to purchase 100,000 shares of common stock with an exercise price of $1.00, which immediately vested. In the event of termination of employment under circumstances described in the employment agreement, including as a result of a change in control, we will be required to provide severance pay equal to the greater of $525,000 or three times total compensation received by Mr. Herrick during the twelve months prior to termination.

STOCK PLANS

Our 1997 Stock Option Plan provides for the grant of stock options to purchase up to 2,000,000 shares. As of April 12, 2004, options to purchase an aggregate of 335,500 shares of our common stock have been granted under the 1997 plan.

Our 1999 Stock Option Plan provides for the grant of stock options to purchase 2,500,000 shares. As of April 12, 2004, options to purchase an aggregate of 1,918,631 shares of our common stock have been granted under the 1999 plan.

Our 2000 Stock Incentive Plan provides for the grant of any or all of the following types of awards: (1) stock options, which may be either incentive stock options or non-qualified stock options, (2) restricted stock, (3) deferred stock and (4) other stock-based awards. A total of 3,500,000 shares of common stock have been reserved for distribution pursuant to the 2000 plan. As of April 12, 2004, options to purchase an aggregate of 2,464,750 shares of our common stock have been granted under the 2000 plan.

Our 2001 Stock Incentive Plan provides for the grant of any or all of the following types of awards: (1) stock options, which may be either incentive stock options or non-qualified stock options, (2) restricted stock, (3) deferred stock and (4) other stock-based awards. A total of 3,500,000 shares of common stock have been reserved for distribution pursuant to the 2001 plan. As of April 12, 2004, options to purchase an aggregate of 3,092,000 shares of our common stock have been granted under the 2001 plan.

As of April 12, 2004, of the options granted under our plans, options to purchase 4,503,386 shares of our common stock have been granted to our officers and directors as follows: Carl T. Wolf 1,300,500 shares; Jeffrey Dittus - 1,500,000 shares; Howard Herrick - 667,000 shares; John F. Levy - 310,241 shares; Robert Toro - 336,145 shares; Richard J. Berman - 125,000; Paul D. Ehrlich - 85,000; Shares; Mark P. Hershhorn -- 90,000 shares; Joseph R. Rosetti - 90,000 shares.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The following table details information regarding our existing equity compensation plans as of December 31, 2003:

PLAN CATEGORY	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights
Equity compensation plans approved by security holders..........	7,810,881	$ 2.92
Equity compensation plans not approved by security holders......	1,291,690	4.29
Total................................	9,102,571	$ 3.11

Note 1: See Note 10 and Note 11 to the Consolidated Financial Statements for a further description of these plans.

The following table sets forth information regarding the beneficial ownership of common stock, based on information provided by the persons named below in publicly available filings, as of April 12, 2004:

- each of MediaBay's directors and executive officers;
- all directors and executive officers of MediaBay as a group; and
- each person who is known by MediaBay to beneficially own more than five percent of our outstanding shares of common stock.

Unless otherwise indicated, the address of each beneficial owner is care of MediaBay, Inc., 2 Ridgedale Avenue, Cedar Knolls, New Jersey 07927. Unless otherwise indicated, we believe that all persons named in the following table have sole voting and investment power with respect to all shares of common stock that they beneficially own.

For purposes of this table, a person is deemed to be the beneficial owner of the securities if that person has the right to acquire such securities within 60 days of April 12, 2004 upon the exercise of options, warrants or other convertible securities. In determining the percentage ownership of the persons in the table above, we assumed in each case that the person exercised and converted all options, warrants or convertible securities which are currently held by that person and which are exercisable within such 60 day period, but that options, warrants or other convertible securities held by all other persons were not exercised or converted.

Name and Address of Beneficial Owner	NUMBER OF SHARES BENEFICIALLY OWNED	PERCENTAGE OF SHARES BENEFICIALLY OWNED
Norton Herrick	21,104,776(1)	58.1%
Howard Herrick	9,476,782(2)	38.7
Carl T. Wolf	1,443,908(3)	7.3
Michael Herrick	1,237,484(4)	6.5
ABC Investments, L.L.C	1,025,641(5)	5.3
Jeffrey Dittus	250,000(6)	1.3
John F. Levy	177,215(7)	*
Robert Toro	156,145(8)	*
Paul D. Ehrlich	60,000(9)	*
Richard J. Berman	55,000(10)	*
Joseph R. Rosetti	45,000(11)	*
Mark P. Hershhorn	45,000(12)	*
All directors and executive officers as a group (9 persons)	11,709,050	44.4%

* Less than 1%

(1) Represents (a) 290,070 shares of common stock held by Norton Herrick, (b) 1,500,000 shares of common stock issuable upon exercise of options, (c) 427,500 shares of common stock issuable upon exercise of warrants held by Huntingdon Corporation ("Huntingdon"), (d) 3,543,303 shares of common stock issuable upon conversion of convertible promissory notes held by Huntingdon and (e) 7,022,581 shares of common stock issuable upon conversion of convertible notes held by Huntingdon, (f) 2,964,180 shares of common stock held by N. Herrick Irrevocable ABC Trust (the "Trust"), (g) 892,857 shares of common stock issuable upon conversion of a convertible promissory note held by the Trust and (h) 4,464,285 shares of common stock issuable upon conversion of 25,000 shares of Series A Stock held by the Trust. Mr. Herrick is the sole stockholder of Huntingdon and has sole voting and dispositive power over the securities held by Huntingdon. Norton Herrick is the beneficiary of the Trust and has shared dispositive power over the securities held by the Trust. See "Certain Relationships and Related Transactions."

(2) Represents (a) 2,964,180 shares held by the Trust, (b) 488,460 shares of common stock held by Howard Herrick, (c) 667,000 shares of common stock issuable upon exercise of options, (d) 892,857 shares of common stock issuable upon conversion of convertible promissory notes held by the Trust and (e) 4,464,285 shares of common stock issuable upon conversion of 25,000 shares of Series A Stock held by the Trust. Howard Herrick is the sole trustee of the Trust. Howard Herrick has sole voting and shared dispositive power over the securities held by the Trust.

(3) Represents 247,090 shares of common stock, 1,015,000 shares of common stock issuable upon exercise of options and 181,818 shares of common stock issuable upon conversion of Series B Stock. Does not include options to purchase 285,000 shares of common stock issuable upon exercise of options.

(4) Represents 587,484 shares and 650,000 shares of common stock issuable upon exercise of options.

(5) Represents shares of common stock issuable upon conversion of a convertible note.

(6) Represents 250,000 shares of common stock issuable upon exercise of options. Does not include 1,250,000 shares of common stock issuable upon exercise of options.

(7) Represents 1,000 shares of common stock, 160,241 shares of common stock issuable upon exercise of options and 25,974 shares of common stock issuable upon conversion of Series B Stock. Does not include options to purchase 150,000 shares of common stock.

(8) Represents shares of common stock issuable upon exercise of options. Does not include 180,000 shares of common stock issuable upon exercise of options.

(9) Represents shares of common stock issuable upon exercise of options. Does not include 25,000 shares of common stock issuable upon exercise of options.

(10) Represents shares of common stock issuable upon exercise of options. Does not include 60,000 shares of common stock issuable upon exercise of options.

(11) Represents 25,000 shares of common stock and 45,000 shares of common stock issuable upon exercise of options. Does not include 45,000 shares of common stock issuable upon exercise of options.

(12) Represents shares of common stock issuable upon exercise of options. Does not include 45,000 shares of common stock issuable upon exercise of options.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Companies wholly owned by Norton Herrick, a principal shareholder, have in the past provided accounting, administrative, legal and general office services to us at cost since our inception. Companies wholly owned by Norton Herrick have also assisted us in obtaining insurance coverage without remuneration. We paid or accrued to these entities $88,000, $430,000 and $292,000 for these services during the years ended December 31, 2001, 2002 and 2003, respectively. In addition, a company wholly owned by Norton Herrick provided us with access to a corporate airplane during 2001 and 2002. We generally paid the fuel, fees and other costs related to our use of the airplane directly to the service providers. For use of this airplane, we paid rental fees of approximately $14,000 in each of 2001 and 2002 to Mr. Herrick's affiliate. As of December 31, 2003 we owed to Mr. Herrick and his affiliates $895,000 for reimbursement of such expenses and services.

On May 1, 2003, we entered into a two-year consulting agreement with XNH Consulting Services, Inc. ("XNH"), a company wholly-owned by Norton Herrick. The agreement provided, among other things that XNH will provide consulting and advisory services to us and that XNH will be under the direct supervision of the our Board of Directors. For its services, we agreed to pay XNH a fee of $8,000 per month and to provide Mr. Herrick with health insurance and other benefits applicable to our officers to the extent such benefits may be provided under our benefit plans. The consulting agreement provided that the indemnification agreement with Mr. Herrick entered into on November 15, 2002 pursuant to which, we agreed to indemnify Mr. Herrick to the maximum extent permitted by the corporate laws of the State of Florida or, if more favorable, our Articles of Incorporation and By-Laws in effect at the time the agreement was executed, against all claims (as defined in the agreement) arising from or out of or related to Mr. Herrick's services as an officer, director, employee, consultant or agent of ours or any subsidiary or in any other capacity shall remain in full force and effect and to also indemnify XNH on the same basis. Mr. Herrick resigned as our Chairman effective May 1, 2003 and Mr. Herrick and we terminated the employment agreement signed as of November 2, 2002 on May 1, 2003.

Effective December 31, 2003, we agreed with Norton Herrick to terminate the two-year consulting agreement with XNH, we agreed to pay XNH a fee of $7,500 per month for 16 months commencing on January 1, 2004 and to provide Mr. Herrick with health insurance and other benefits applicable to our officers to the extent such benefits may be provided under our benefit plans. The termination agreement provides that the indemnification agreement with Mr. Herrick entered into on November 15, 2002 shall remain in full force and effect and to also indemnify XNH on the same basis. In connection with the termination agreement, the non-competition and nondisclosure covenants of the XNH consulting agreement were extended until December 31, 2006.

On May 7, 2003, we sold 3,350 shares of a newly created Series B Stock with a liquidation preference of $100 per share for $335,000. Of the total sold, 1,400 shares ($140,000), were purchased by Carl Wolf, Chairman and a director of MediaBay, and 200 shares ($20,000) were purchased by John Levy, our Executive Vice President and Chief Financial Officer of the Company. The holders of shares of Series B Convertible Preferred Stock will receive dividends at the rate of $9.00 per share, payable quarterly, in arrears, in cash on each March 31, June 30, September 30 and December 31; provided that payment will accrue until we are permitted to make such payment in cash under our Credit Agreement.

The Series B Stock is convertible into shares of common stock at a conversion rate equal to a fraction, (i) the numerator of which is equal to the number of Series B Stock times $100 plus accrued and unpaid dividends though the date of conversion and (ii) the denominator is $0.77, the average price of our stock on May 6, 2003.

In the event of a liquidation, dissolution or winding up of MediaBay, the holders of Series B Stock shall be entitled to receive out of our assets, a sum in cash equal to $100.00 per share before any amounts are paid to the holders of our common stock and on a pari passu basis with the holders of the Series A Convertible Preferred Stock. The holders of Series B Stock shall have no voting rights, except as required by law and except that the vote or consent of the holders of a majority of the outstanding shares of Series B Stock, voting separately as a class, will be required for any amendment, alteration or repeal of the terms of the Series B Stock that adversely effects the rights, preferences or privileges of the Series B Stock.

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On July 31, 2003, Norton Herrick exercised options to purchase 300,000 shares of our common stock at an exercise price of $.50 per share pursuant to an Option Agreement dated November 23, 2001. The options were exercised on a "cash-less" basis and the closing stock price on July 31, 2003 was $.78. Accordingly, we issued to Mr. Herrick a certificate for 107,692 shares of our common stock.

During the three months ended September 30, 2003, Norton Herrick provided a $100,000 guarantee to a vendor. We subsequently paid the vendor and the guarantee expired. Mr. Herrick received no compensation and did not profit from the transaction.

During the three months ended September 30, 2003, Norton Herrick also loaned the Company $100,000. The loan was subsequently converted into an investment by Huntingdon Corporation, a company wholly owned by Mr. Herrick, in the $1,065,000 bridge financing completed on October 1, 2003. Carl Wolf, our Chairman, also purchased a $100,000 note in this financing. In consideration, we issued to each of Huntingdon and Mr. Wolf a $100,000 principal amount note due October 1, 2004. The notes are identical to all other notes issued in the financing and bear interest at the rate of 18% per annum, payable at maturity. In connection with the issuance of the notes, we agreed, subject to receipt of shareholder approval, to issue to each of Huntingdon and Mr. Wolf warrants to purchase 25,000 shares of common stock at an exercise price of $.80 and agreed to issue to each of them warrants to purchase an additional 25,000 shares of common stock if the notes are not repaid on April 1, 2004 at an exercise price per share equal to the closing sale price of our common stock on March 31, 2004.

We entered into an agreement with Norton Herrick dated November 7, 2003 (the "November Agreement") whereby Mr. Herrick agreed to pay amounts owed to us under Section 16(b) of the Securities Exchange Act of 1934 as a result of various transactions which are attributable to Mr. Herrick occurring within less than six months of each other that involved our securities. Mr. Herrick agreed to pay us the sum of $1,742,149, (the "Payment") by delivering to us for cancellation within ten (10) days of the date of the November Agreement, shares of our common stock and/or warrants to purchase shares of common stock with an aggregate value equal to the Payment. Under the November Agreement, the value of each share of common stock delivered under the Agreement is equal to the last sale price of our common stock on the trading day immediately prior to the date on which the shares of common stock were delivered (the "Market Price"). The value of any warrant delivered under the November Agreement is equal to the Market Price of the underlying shares less the exercise price of the warrant. Mr. Herrick delivered the shares of common stock and warrants pursuant to the November Agreement on Monday, November 17, 2003, with the value of the securities based on the Market Price on November 14, 2003 of $.94 per share of common stock. As part of the Payment, Mr. Herrick returned to us 1,095,372 shares of our common stock. Based on the Market Price, the aggregate value of these shares is $1,029,650. Also, as part of the Payment, Mr. Herrick deposited warrants to purchase 1,875,000 shares of our common stock. Based on the Market Price ($.94) less the exercise price of the warrants ($.56), the aggregate value of these warrants was $712,500. Of the 1,875,000 warrants deposited, 1,650,000 became exercisable May 14, 2001 and 225,000 became exercisable February 22, 2002.

In 2003 and 2002, Norton Herrick advanced $360,000 and $372,000, respectively, to certain of our vendors and professional firms as payment of amounts owed to them. As we made payments to these vendors, the vendors repaid the amounts advanced to them by Mr. Herrick. Mr. Herrick received no interest or other compensation for advancing the monies. As of April 12, 2004, none of the advances were outstanding.

On January 29, 2004, we issued $4,000,000 aggregate principal amount of promissory notes (the "2004 Notes") and warrants to purchase 2,352,946 shares of common stock to 13 institutional and accredited investors. In connection with this offering, Norton Herrick and Huntingdon entered into a letter agreement with the purchasers of the 2004 Notes pursuant to which they granted to the holders of the 2004 Notes in the event of an Event of Default (as defined in the 2004 Notes) the rights to receive payment under certain secured indebtedness owed by us to Norton Herrick and Huntingdon and to exercise their rights under security agreements securing such secured indebtedness. Pursuant to the letter agreement, Norton Herrick and Huntingdon also executed Powers-of-Attorney in favor of a representative of the 2004 Note holders pursuant to which such representative may, following an Event of Default, take actions necessary to enforce the 2004 Note holders rights under the letter agreement, including enforcing Norton Herrick's and Huntingdon's rights under the security agreements. In consideration for Huntingdon's consent to the Financing and execution of the letter agreement upon receipt of shareholders' approval, we agreed to reduce the conversion price of $1,150,000 principal amount of convertible promissory notes held by Huntingdon from $2.00 to $1.27 and $500,000 principal amount of convertible promissory notes held by Huntingdon from $1.82 to $1.27.

ITEM 14. PRINCIPAL ACCOUNTANTS' FEES AND SERVICES

On June 24, 2003, MediaBay, Inc. (the "Company") dismissed Deloitte & Touche LLP ("D&T"), our former independent certified public accountants. During neither of the past two years ended December 31, 2002 did the reports by D&T on the financial statements of the Company contain an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles. The decision to dismiss D&T as the Company's independent certified public accountants was made by the Audit Committee of the Board of Directors of the Company. During the Company's two most recent fiscal years and subsequent period up to June 24, 2003, there were no disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to their satisfaction would have caused them to make reference in connection with their opinion to the subject matter of the disagreement. On June 24, 2003, the Company engaged Amper, Politziner & Mattia, P.C. to serve as the Company's independent certified public accountants.

The following table presents fees charged for professional fees charged for professional audit services for the audit of the Company's financial statements for the years ended December 31, 2003 by Amper Politziner & Mattia, P.C. and 2002 by D&T. No fees were paid for non-audit related services.

	2003	2002
Audit Fees (1)	$103,000	$338,000
Audit-Related Fees (2)	--	34,000
Tax Fees (3)	--	--
All Other Fees (4)	13,000	--
Total	$116,000	$372,000

(1) The aggregate fees billed for each year for professional services rendered by our principal accountant for the audit of our financial statements and review of financial statements included in our Form 10-Q.

(2) Fees billed for assurance and related services by our principal accountant for accounting research, issues relating to prior years' financial statements and the filing of a registration statement on Form S-3 not reported above.

(3) There were no fees billed by our principal accountant for professional services rendered for compliance, tax advice and tax planning.

(4) D&T billed $13,000 for review of financial statements included in our Form 10-Q for the three months ended March 31, 2003 prior to their dismissal. No other fees were billed by our principal accountant other than the fees disclosed above.

Pre-approval Policies and Procedures

Consistent with the Securities and Exchange Commission requirements regarding auditor independence, our Audit Committee has adopted a policy to pre-approve all audit and permissible non-audit services provided by our principal accountant. Under the policy, the Audit Committee must approve non-audit services prior to the commencement of the specified service. Our principal accountants have verified, and will verify annually, to our Audit Committee that have not performed, and will not perform any prohibited non-audit service.

PART IV

Item 15. Exhibits, Financial Statements Schedules, and Reports on Form 8-K

(a) Exhibits

3.1 Restated Articles of Incorporation of the Registrant. (1)

3.2 Articles of Amendment to Articles of Incorporation. (5)

3.3 Articles of Amendment to Articles of Incorporation. (6)

3.4 Articles of Amendment to Articles of Incorporation of the Registrant filed with the Department of State of the State of Florida on January 18, 2002. (11)

3.5 Articles of Amendment to Articles of Incorporation of the Registrant filed with the Department of State of the State of Florida on May 7, 2003. (15)

3.6 Amended and Restated By-Laws of the Registrant. (14)

10.1 Employment Agreement between the Registrant and Carl Wolf. (14)

10.2 Employment Agreement between the Registrant and Howard Herrick. (13)

10.3 Put Agreement, dated as of December 11, 1998, by and between the Registrant and Premier Electronic Laboratories, Inc. (3)

10.4 $3,200,000 Principal Amount 9% Convertible Senior Subordinated Promissory Note of the Registrant to ABC Investment, L.L.C. due December 31, 2004. (12)

10.5 Modification Letter, dated December 31, 1998, among Norton Herrick, the Registrant and Fleet National Bank (3)

10.6 Security Agreement, dated as of December 31, 1998, by and among the Registrant, Classic Radio Holding Corp. and Classic Radio Acquisition Corp. and Norton Herrick. (3)

10.7 1997 Stock Option Plan (1)

10.8 1999 Stock Incentive Plan (4)

10.9 2000 Stock Incentive Plan (7)

10.10 2001 Stock Incentive Plan (10)

10.11 Amended and Restated Credit Agreement dated as of April 30, 2001 (the "Credit Agreement"), among Registrant Audio Book Club, Inc. ("ABC"), Radio Spirits, Inc. ("RSI") and ING (U.S.) Capital LLC ("ING"). (9)

10.12 Form of Amended and Restated Security Agreement, dated as of April 30, 2001 among Registrant, RSI, ABC, VideoYesteryear, Inc. ("VYI"), MediaBay.com, Inc. ("MBCI"), audiobookclub.com ("ABCC"), ABC-COA Acquisition Corp. (abc-coa"), MediaBay Services, Inc. ("MSI"), ABC Investment Corp. ("AIC"), MediaBay Publishing, Inc. ("MPI"), Radio Classics, Inc. ("RCI") and ING. (9)

10.13 Form of Amended and Restated Intellectual Property Security Agreement, dated as of April 30, 2001 among Registrant, RSI, ABC, VYI, MBCI, ABCC, ABC-COA, MSI, AIC, MPI, RCI and ING. (9)

10.14 $1,984,250 principal amount 9% convertible senior subordinated promissory note of Registrant issued to Norton Herrick due December 31, 2004. (9)

10.15 $500,000 principal amount 9% convertible senior subordinated promissory note of Registrant issued to N Herrick Irrevocable ABC Trust due December 31, 2004. (12)

10.16 $2,500,000 principal amount convertible senior promissory note of Registrant issued to Huntingdon Corporation ("Huntingdon") due September

30, 2002. (9)

10.17 $800,000 principal amount 12% convertible senior subordinated promissory note of Registrant issued to Huntingdon due December 31, 2002. (9)

10.18 Form of Security Agreement dated as of April 30, 2001 between Registrant, the subsidiaries of Registrant set forth on Schedule 2 annexed thereto and Huntingdon. (9)

10.19 $500,000 principal amount convertible senior promissory note of Registrant issued to Huntingdon due June 30, 2003. (12)

10.20 Consulting Agreement, dated as of October 18, 2002 and effective as of January 1, 2003 between MEH Consulting Services, Inc. (the "Consultant") and the Registrant. (13)

10.21 Amendment No. 2 to the Credit Agreement dated as of October 3, 2002. (11)

10.22 Loan Agreement dated October 3, 2002 between Huntingdon and the Registrant, as amended. (14)

10.23 Agreement dated October 3, 2002 between Norton Herrick and the Registrant, among other things, amending the $1,984,250 principal amount note. (14)

10.24 Agreement dated October 3, 2002 between Evan Herrick and the Registrant, among other things, amending a $500,000 principal amount note. (14)

10.25 Letter Agreement between the Registrant and Norton Herrick entered into in November 2002. (14)

10.26 Indemnification Agreement dated as of November 15, 2002 between the Registrant, MEH Consulting Services. Inc. and Michael Herrick. (14)

10.27 Indemnification Agreement dated as of November 15, 2002 between the Registrant and Norton Herrick. (14)

10.28 Amendment No. 3 to the Credit Agreement dated April 9, 2003. (14)

10.29 Amendment No. 4 to Credit Agreement dated April 28, 2003 (15)

10.30 Consulting and Termination Agreement dated as of May 1, 2003 between XNH Consulting Services, Inc., Norton Herrick and the Registrant (15)

10.31 Letter from Deloitte & Touche LLP dated June 25, 2003 (16)

10.32 Amendment No. 5 to Credit Agreement dated September 12, 2003.

10.33 Amendment No. 6 to Credit Agreement dated September 23, 2003.

10.34 Settlement Agreement with Norton Herrick dated November 7, 2003.

10.35 Amendment No. 7 to Credit Agreement dated January 29, 2004.

10.36 Employment Agreement between the Registrant and Jeffrey Dittus dated January 28, 2004.

10.37 Agreement dated January 29, 2004 between the Registrant, Norton Herrick and Huntingdon Corporation.

10.38 Agreement dated January 29, 2004 among the Registrant, Norton Herrick, Huntingdon Corporation and the Lenders listed on Schedule A thereto.

10.39 Termination Agreement dated as of March 8, 2004 among XNH Consulting Services, Inc., the Registrant and Norton Herrick.

21.1 Subsidiaries of the Company.

23.1 Consent of Amper Politziner & Mattia, P.C.

23.2 Consent of Deloitte & Touche LLP.

31.1 Chief Executive Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

31.2 Chief Financial Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

32.1 Certification of Jeffrey Dittus, Chief Executive Officer of MediaBay, Inc., pursuant to 18 U.S.C Section 1350, as Adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2 Certification of John Levy, Executive Vice President and Chief Financial Officer of MediaBay, Inc., pursuant to 18 U.S.C Section 1350, as Adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2001

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(1) Incorporated by reference to the applicable exhibit contained in our Registration Statement on Form SB-2 (file no. 333-30665) effective October 22, 1997.
(2) Incorporated by reference to the applicable exhibit contained in our Current Report on Form 8-K for reportable event dated December 14, 1998.
(3) Incorporated by reference to the applicable exhibit contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 1998.
(4) Incorporated by reference to the applicable exhibit contained in our Proxy Statement dated February 23, 1999.
(5) Incorporated by reference to the applicable exhibit contained in our Quarterly Report on Form 10-QSB for the quarterly period ended June 30, 1999.

(6) Incorporated by reference to the applicable exhibit contained in our Registration Statement on Form SB-2 (file no. 333-95793) effective March 14, 2000.
(7) Incorporated by reference to the applicable exhibit contained in our Proxy Statement dated May 23, 2000.
(8) Incorporated by reference to the applicable exhibit contained in our Annual Report on Form 10-KSB for the year ended December 31, 2000.
(9) Incorporated by reference to the applicable exhibit contained in our Quarterly Report on Form 10-QSB for the quarterly period ended March 31, 2001.
(10) Incorporated by reference to the applicable exhibit contained in our proxy statement dated September 21, 2001.
(11) Incorporated by reference to the applicable exhibit contained in our Current Report on Form 8-K for reportable event dated January 18, 2002.
(12) Incorporated by reference to the applicable exhibit contained in our Annual Report on Form 10-KSB for the year ended December 31, 2001.

(13) Incorporated by reference to the applicable exhibit contained in the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002.
(14) Incorporated by reference to the applicable exhibit contained in our Annual Report on Form 10-K for the year ended December 31, 2002.
(15) Incorporated by reference to the applicable exhibit contained in our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2003.
(16) Incorporated by reference to the applicable exhibit contained in our Current Report on Form 8-K for the reportable event dated June 24, 2003.

(b) Financial Statement Schedule

Schedule -I - Valuation and Qualifying Accounts and Reserve

(c) Reports on Form 8-K filed during the quarter ended December 31, 2002.

None.

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MEDIABAY, INC.

FORM 10-K

ITEM 8

INDEX TO FINANCIAL STATEMENTS

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INDEPENDENT AUDITORS' REPORT

The Board of Directors and Stockholders
Media Bay, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheet of Media Bay Inc. and Subsidiaries as of December 31, 2003, and the related consolidated statements of operations, stockholders' equity, and cash flows for the year ended December 31, 2003. Our audit also included the financial statement schedule listed in the Index at page S-1 as of December 31, 2003 and for the year then ended. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Media Bay Inc. and Subsidiaries at December 31, 2003, and the consolidated results of their operations and their cash flows for year ended December 31, 2003, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the related financial statement schedule as of December 31, 2003 and for year then ended, when considered in relation to the consolidated basic financial statements taken as a whole, presents fairly in all material respects, the information set forth therein.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has suffered recurring losses from operations and has a working capital deficiency, which raise substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters also are described in Note 1. The financial statements do not include any adjustments that might result from the outcome of the uncertainty.

/s/ Amper, Politziner & Mattia
Edison, New Jersey
March 19, 2004, except for Note 21 which is as of April 12, 2004

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Stockholders of MediaBay, Inc.:

We have audited the accompanying consolidated balance sheets of MediaBay, Inc. and subsidiaries (the "Company") as of December 31, 2002, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the two years in the period ended December 31, 2002. Our audits also included the financial statement schedule as of December 31, 2002, and for each of the two years then ended listed in the index at Item 15(a)(2). These financial statements and the financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements and the financial statement schedule based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of MediaBay, Inc. and subsidiaries at December 31, 2002, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2002, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in Note 3 to the consolidated financial statements, effective January 1, 2002, the Company changed its method of accounting for goodwill and intangible assets upon adoption of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets".

/s/ Deloitte & Touche LLP

Parsippany, New Jersey
April 15, 2003

MEDIABAY, INC.
CONSOLIDATED BALANCE SHEETS
(DOLLARS IN THOUSANDS)

ASSETS	
Current Assets:	
Cash and cash equivalents	$
Accounts receivable, net of allowances for sales returns and doubtful accounts of $4,446 and $5,325 at December 31, 2003 and 2002, respectively	
Inventory	
Prepaid expenses and other current assets	
Royalty advances	
Total current assets	
Fixed assets, net	
Deferred member acquisition costs	
Deferred income taxes	
Other intangibles	
Goodwill	
	$

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:	
Accounts payable and accrued expenses	$
Accounts payable, related parties	
Common stock subject to contingent put rights, current portion	
Short-term debt, net of original issue discount of $274 at December 31, 2003	
Related party short-term debt, net of original issue discount of $142 at December 31, 2003........	
Total current liabilities	
Long-term debt, ...	
Related party long-term debt, net of original issue discount of $567 at December 31, 2002	
Common stock subject to contingent put rights	
Commitments and Contingencies	
Preferred stock, no par value, authorized 5,000,000 shares; 25,000 shares of Series A issued and outstanding at December 31, 2003 and December 31, 2002 and 3,350 shares and no shares of Series B at December 31, 2003 and December 31, 2002, respectively	
Common stock; no par value, authorized 150,000,000 shares; issued and outstanding 13,057,414 and 14,341,376 at December 31, 2003 and 2002, respectively	
Contributed capital	
Accumulated deficit	(
Total common stockholders' equity	
	$

See accompanying notes to consolidated financial statements.

MEDIABAY, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

	YEARS ENDED DECEMBER 31,		
	2003	2002	2
Sales, net of returns, discounts and allowances of $16,960, $16,195 and $13,099 for the years ended December 31, 2003, 2002 and 2001, respectively	$ 36,617	$ 45,744	$ 4
Cost of sales	17,479	20,651	1
Cost of sales - write-downs	--	--	
Advertising and promotion	9,988	10,156	1
Advertising and promotion write-downs	--	--	
Bad debt	3,940	2,821	
General and administrative	6,816	8,347	
Severance and other termination costs	544	--	
Asset write-downs and strategic charges	749	--	
Depreciation and amortization	328	1,314	

Non-cash write-down of intangibles	--	1,224	
Operating (loss) income	(3,227)	1,231	(1
Interest expense	1,925	2,974	
Loss before income tax (expense) benefit	(5,152)	(1,743)	(2
Income tax (expense) benefit	(1,471)	(550)	1
Net loss	(6,623)	(2,293)	(
Dividends on preferred stock	246	217	
Net loss applicable to common shares	$ (6,869)	$ (2,510)	$ (
Basic and diluted loss per share:			
Basic and diluted loss per share	$ (.49)	$ (.18)	$

See accompanying notes to consolidated financial statements.

MEDIABAY, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
YEARS ENDED DECEMBER 31, 2003, 2002 AND 2001
(AMOUNTS IN THOUSANDS)

	Series A Preferred stock - number of shares	Series A Preferred stock no par value	Preferre stock - number o shares
Balance at January 1, 2001	--	$ --	$ --
Warrants granted for financing and consulting services	--	--	--
Beneficial conversion feature of debt issued	--	--	--
Net loss applicable to common shares	--	--	--
Balance at December 31, 2001	--	--	--
Conversion of convertible debt to preferred stock	25	2,500	--
Conversion of convertible notes	--	--	--
Options and warrants granted for consulting	--	--	--
Exercise of options and warrants	--	--	--
Cancellation of warrants issued	--	--	--
Stock issued to consultants	--	--	--
Stock tendered as payment for exercise of options	--	--	--
Stock and warrants issued in acquisition of patent	--	--	--
Loss applicable to common shares	--	--	--
Balance at December 31, 2002	25	2,500	--
Issuance of Series B Preferred Stock	--	--	3,350
Warrants granted in consideration for non-compete agreements	--	--	--
Exercise of options	--	--	--
Stock issued to consultants	--	--	--
Options issued to consultants	--	--	--
Columbia House settlement	--	--	--
Stock tendered as payment of settlement	--	--	--
Warrants issued in connection with financing	--	--	--

Options issued to Directors	--	--	--
Loss applicable to common shares	--	--	--
Balance at December 31, 2003	25	$ 2,500	3,350

	Common stock number of shares	Common stock - no par value	Contribute capital
Balance at January 1, 2001	13,862	93,468	6,702
Warrants granted for financing and consulting services	--	--	333
Beneficial conversion feature of debt issued	--	--	695
Net loss applicable to common shares	--	--	--
Balance at December 31, 2001	13,862	93,468	7,730
Conversion of convertible debt to preferred stock	--	--	--
Conversion of convertible notes	200	1,000	(49)
Options and warrants granted for consulting	--	--	659
Exercise of options and warrants	221	207	--
Cancellation of warrants issued	--		(125)
Stock issued to consultants	19	50	--
Stock tendered as payment for exercise of options	(61)	--	--
Stock and warrants issued in acquisition of patent	100	75	36
Loss applicable to common shares	--	--	--
Balance at December 31, 2002	14,341	94,800	8,251
Issuance of Series B Preferred Stock	--	--	--
Warrants granted in consideration for non-compete agreements	23	--	
Exercise of options	107	--	--
Stock issued to consultants	29	14	--
Options issued to consultants	--	--	26
Columbia House settlement	(325)	(247)	3,020
Stock tendered as payment of settlement	(1,095)	--	--
Warrants issued in connection with financing	--	--	176
Options issued to Directors	--	--	73
Loss applicable to common shares	--	--	--
Balance at December 31, 2003	13,057	$ 94,567	$11,569

See accompanying notes to consolidated financial statements.

MEDIABAY, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(DOLLARS IN THOUSANDS)

YEARS EN

	2003
Cash flows from operating activities:	
Net loss applicable to common shares	$(6,869)
Adjustments to reconcile net loss to net cash used in operating activities:	
Amortization of deferred member acquisition costs	6,161
Non-current accrued interest and dividends payable	1,155
Amortization of deferred financing costs and original issue discount	561
Depreciation and amortization	328
Non-cash compensation expense	118
Asset write-downs and strategic charges	749
Income tax expense (benefit)	1,471
Changes in asset and liability accounts, net of acquisitions and asset write-downs and strategic charges:	
Decrease (increase) in accounts receivable, net	4,195
Decrease (increase) in inventory	896
Decrease (increase) in prepaid expenses and other current assets	300
Decrease (increase) in royalty advances	240
Increase in deferred member acquisition costs	(2,410)
(Decrease) increase in accounts payable and accrued expenses	(5,346)
Net cash provided by (used in) operating activities	1,549
Cash flows from investing activities:	
Purchase of fixed assets	(16)
Additions to intangible assets	(102)
Cash paid in acquisitions	(148)
Net cash used in investing activities	(266)
Cash flows from financing activities:	
Proceeds from issuance of notes payable - related parties	--
Proceeds from issuance of debt	1,065
Repayment of long-term debt	(1,615)
Increase in deferred financing costs	(99)
Payments made in connection with litigation settlement recorded in contributed capital, net of cash received	(676)
Proceeds from exercise of stock options	--
Proceeds from sale of preferred stock, net of costs	328
Net cash (used in) provided by financing activities	(997)
Net increase (decrease) in cash and cash equivalents	286
Cash and cash equivalents at beginning of year	397
Cash and cash equivalents at end of year	$ 683

See accompanying notes to consolidated financial statements.

MEDIABAY, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2003, 2002 AND 2001
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE D

(1) LIQUIDITY AND CASH FLOW
Historically, MediaBay, Inc. (the "Company"), has funded its cash requirements through sales of equity and debt securities and borrowings from financial institutions and principal shareholders. The Company's line of credit is due September 30, 2004, an additional $10.8 million is due upon demand of the holders of notes which may be made at various times following the repayment of the line of credit and an additional $4.3 million under promissory notes is due in the fourth quarter of 2004. The Company currently does not have sufficient funds to repay the debt and is actively seeking to obtain other financing to replace the debt or obtain an extension of its maturity.

The Company currently does not have sufficient funds to market to attract new members and customers, and its customer and revenue bases have eroded and will continue to erode. If the Company does not have the funds available to spend to acquire new members to offset member attrition and/or expand its existing membership and customer bases, revenue will continue to decline, which will continue to negatively impact performance and could ultimately impair the Company's ability to continue as a going concern.

The Company has implemented a series of initiatives to increase cash flow. While these initiatives and the significant reduction in marketing expenses increased cash provided by operating activities in 2003, the Company cannot sustain its operations without increasing marketing expenses. The Company anticipates requiring additional financing to repay debt and to fund the expansion of operations, acquisitions, working capital or other related.

(2) ORGANIZATION
The Company is a Florida corporation, was formed on August 16, 1993. MediaBay, Inc. is a seller of spoken audio products, including audiobooks and old-time radio shows, through direct response, retail and Internet channels. The Company markets audiobooks primarily through its Audio Book Club. Its old-time radio programs are marketed through direct-mail catalogs, over the Internet at radiospirits.com and, on a wholesale basis, to major retailers.

(3) SIGNIFICANT ACCOUNTING POLICIES Principles of Consolidation
The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany accounts have been eliminated.

Cash and Cash Equivalents
Securities with maturities of three months or less when purchased are considered to be cash equivalents.

Fair Value of Financial Instruments
The carrying amount of cash, accounts receivable, accounts payable and accrued expenses approximates fair value due to the short maturity of those instruments.

The fair value of long-term debt is estimated based on the interest rates currently available for borrowings with similar terms and maturities. The carrying value of the Company's long-term debt approximates fair value.

Inventory
Inventory, consisting primarily of audiocassettes and compact discs held for resale, is valued at the lower of cost (weighted average cost method) or market.

Prepaid Expenses

Prepaid expenses consist principally of deposits and other amounts being expensed over the period of benefit. All current prepaid expenses will be expensed over a period no greater than the next twelve months.

Fixed Assets, Net
Fixed assets, consisting primarily of furniture, leasehold improvements, computer equipment, and third-party web site development costs, are recorded at cost. Depreciation and amortization, which includes the amortization of equipment under capital leases, is provided by the straight-line method over the estimated useful life of three years (the lease term) for computer equipment and five years (the lease term) for sound equipment under capital leases, five years for equipment, seven years for furniture and fixtures, five years for leasehold improvements, and two years for Internet web site development costs. Ongoing maintenance and other recurring charges are expensed as incurred.

Other Intangibles, Net
Intangible assets, principally consisting of customer lists, license agreements, and mailing and non-compete agreements acquired in the Company's acquisitions, are being amortized over their estimated useful life, which range from three to seven years, on a straight-line basis.

Goodwill
Goodwill represents the excess of the purchase price over the fair value of net assets acquired in business combinations accounted for using the purchase method of accounting. In accordance with Statement of Financial Accounting Standards ("SFAS") No. 142, "Goodwill and Other Intangible Assets", the Company ceased amortization of goodwill as of January 1, 2002. The Company completed the transitional impairment test as of January 1, 2002, which did not result in an impairment loss and performed its annual impairment tests as of October 31, 2003 and 2002, which did not result in an impairment loss. Prior to January 1, 2002, goodwill was amortized over the estimated period of benefit not to exceed 20 years.

Revenue Recognition
The Company derives its principal revenue through sales of audiobooks, classic radio shows and other spoken word audio products directly to consumers principally through direct mail. The Company also sells classic radio shows to retailers either directly or through distributors. The Company derives additional revenue through rental of its proprietary database of names and addresses to non-competing third parties through list rental brokers. The Company also derives a small amount of revenue from advertisers included in its nationally syndicated classic radio shows. The Company recognizes sales to consumers, retailers and distributors upon shipment of merchandise. List rental revenue is recognized on notification by the list brokers of rental by a third party when the lists are rented. The Company recognizes advertising revenue upon notification of the airing of the advertisement by the media buying company representing the Company. Allowances for future returns are based upon historical experience and evaluation of current trends.

Shipping and Handling Revenue and Costs
Amounts paid to the Company for shipping and handling by customers is included in sales. Amounts the Company incurs for shipping and handling costs are included in cost of sales. The Company recognizes shipping and handling revenue upon shipment of merchandise. Shipping and handling expenses are recognized on a monthly basis from invoices from the third party fulfillment houses, which provide the services.

Cost of Sales

Cost of sales includes the following:

- Product costs (including free audiobooks in the initial enrollment offer to prospective members)
- Royalties to publishers and rightsholders
- Fulfillment costs, including shipping and handling
- Customer service
- Direct response billing, collection and accounts receivable management

Cooperative Advertising and Related Selling Expenses
In November 2001, the Emerging Issues Task Force ("EITF") issued EITF No. 01-9, "Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)", which addresses the income statement classification of certain credits, allowances, adjustments, and payments given to customers for the services or benefits provided. The Company adopted EITF No. 01-9 effective January 1, 2002, and, as such, has classified the cost of these sales incentives as a reduction of net sales. The effect on net sales of applying EITF No. 01-9 in 2003 and 2002 was $60 and $118, respectively.

Bad Debt Expense
The Company records an estimate of its anticipated bad debt expense based on historical experience.

General and Administrative Costs
General and administrative costs include the following:

- Payroll and related items
- Commissions
- Insurance
- Office expenses
- Telephone and postage
- Public and investor relations
- Dues and subscriptions
- Rent and utilities
- Travel and entertainment
- Bank charges
- Professional fees, principally legal and auditing fees
- Consulting

Stock-Based Compensation

The Company accounts for its stock-based compensation plans using the intrinsic value method in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees". Accordingly, no stock-based employee compensation cost has been recognized in the financial statements as all options granted under the Company's stock option plan, had an exercise price at least equal to the market value of the underlying common stock on the date of grant. The pro forma information below is based on provisions of SFAS No. 123, "Accounting for Stock-Based Compensation", as amended by SFAS No. 148, "Accounting for Stock-Based Compensation-Transition and Disclosure", issued in December 2002.

	YEAR ENDED	
	2003	20

Net loss applicable to common shares, as reported	($6,869)	($2,
Add: Stock-based employee compensation expense included in reported net income applicable to common shares, net of related tax effects	--	
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(1,486)	(1,
Pro forma net loss applicable to common shares	($8,355)	($3,
Net loss per share:		
Basic and diluted-as reported	($0.49)	($0
Basic and diluted-pro forma	($0.60)	($0

Income Taxes
The ultimate realization of deferred tax assets is dependent on the generation of future taxable income during the periods in which temporary timing differences become deductible. Although realization of net deferred tax assets is not assured, management has determined that it is more likely than not that a portion of the Company's deferred tax asset relating to temporary differences between the tax bases of assets or liabilities and their reported amounts in the financial statements will be realized in future periods. The Company determines the utilization of deferred tax assets in the future based on current year projections by management.

At December 31, 2003, the Company had a remaining net deferred tax asset in the amount of $14.8 million. Should management determine it would be able to realize deferred tax assets in the future in excess of the net recorded amount, an adjustment to its deferred tax asset would increase income in the period such determination is made. Likewise, should management determine that it will not be able to realize all or part of its net deferred tax asset in the future, an adjustment to the deferred tax asset would be recorded as an increase to the valuation allowance, resulting in a deferred tax expense charged against income in the period such determination is made.

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Deferred Member Acquisition Costs
Promotional costs directed at current members are expensed on the date the promotional materials are mailed. The cost of any premiums, gifts or the discounted audiobooks in the promotional offer to new members is expensed as incurred. The Company accounts for direct response advertising for the acquisition of new members in accordance with AICPA Statement of Position 93-7, "Reporting on Advertising Costs" ("SOP 93-7"). SOP 93-7 states that the cost of direct response advertising (a) whose primary purpose is to elicit sales to customers who could be shown to have responded specifically to the advertising and (b) that results in probable future benefits should be reported as assets net of accumulated amortization. Accordingly, the Company has capitalized direct response advertising costs and amortizes these costs over the period of future benefit (the average member life), which has been determined to be generally 30 months. The costs are being amortized on accelerated basis consistent with the recognition of related revenue. In the fourth quarter of 2003, the Company adjusted the amortization period for advertising to attract customers to its

World's Greatest Old-Time Radio continuity program and revised the estimate period for amortization of these advertising costs down to 18 months, which resulted in an increase in advertising expenses for the year ended December 31, 2003 of $409.

Royalties
The Company is liable for royalties to licensors based upon revenue earned from the respective licensed product. The Company pays certain of its publishers and other rightsholders advances for rights to products. Royalties earned on the sale of the products are payable only in excess of the amount of the advance. Advances, which have not been recovered through earned royalties, are recorded as an asset. Advances not expected to be recovered through royalties on sales are charged to royalty expense.

Use of Estimates
The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from these estimates. On an ongoing basis, management reviews its estimates based on current available information. Changes in facts and circumstances may result in revised estimate.

(3) ASSET WRITE-DOWNS AND STRATEGIC CHARGES
In the fourth quarter of 2003, the Company evaluated the performance of Audio Passages, an Audio Book Club marketing program tailored to listeners with an interest in Christian product and determined based on past performance and expected future performance that it should terminate the Audio Passages marketing program. In connection with the termination of the Audio Passages marketing program, the Company took a strategic charge for the establishment of a reserve for obsolescence of Audio Passages inventory of $285 and an assets write-down for previously capitalized advertising, which will no longer recover of $464.

In the third quarter of 2001, the Company began to implement a series of actions and decisions designed to improve gross profit margin, refine its marketing efforts and reduce general and administrative costs. Specifically, the Company reduced the number of items offered for sale at both its Radio Spirits and Audio Book Club subsidiaries, has moved fulfillment of its old-time radio products to a third party fulfillment provider, limited its investment and marketing efforts in downloadable audio and refined its marketing of old-time radio products and its marketing efforts to existing Audio Book Club members. In connection with the movement of the fulfillment of old-time radio products to a third party provider, the Company closed its old-time radio operations in Schaumburg, Illinois in February 2002 and runs all of its operations from its corporate headquarters located in Cedar Knolls, New Jersey. The Company has also reviewed its general and administrative costs and has eliminated certain activities unrelated to its old-time radio and Audio Book Club operations.

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As a result of these decisions in the third quarter of 2001, the Company recorded $11,276 of strategic charges. These charges include the following:

o $2,261 of inventory written down to net realizable value due to a reduction in the number of stock keeping units (SKU's);

o $2,389 of write-downs to deferred member acquisition costs at Audio Book Club related to new member acquisition campaigns that have been determined to be no longer profitable and recoverable through future operations based upon historical performance and future projections;

- $1,885 of write-downs to royalty advances paid to audiobook publishers and other license holders primarily associated with inventory titles that will no longer be carried and sold to members;

- $1,582 of write-downs to deferred member acquisition costs at Radio Spirits related to old-time radio new customer acquisition campaigns that have been determined to be no longer profitable and recoverable through future operations based upon historical performance and future projections;

- a write-down of $683 of customer lists acquired in the Columbia House Audiobook Club purchase due to the inability to recover this asset through future operations;

- $635 of fixed assets of the Old-Time Radio operations written down to net realizable value due to the closing of the Schaumburg, Illinois facility;

- $464 of write-downs of royalty advances paid for downloadable licensing rights that are no longer recoverable due to the strategic decisions made;

- $357 of write-downs of prepaid assets,

- $297 of write-offs to receivables

- $192 of net write-offs of capitalized website development costs related to downloadable audio all of which are no longer recoverable due to the strategic changes in the business; and

- $531 accrued for lease termination costs in connection with the closing of the Schaumburg, Illinois facility.

- Of these charges, $2,261 related to inventory write-downs has been recorded to costs of -ales - write-downs, $3,971 has been recorded to advertising and promotion - write-downs and the remaining $5,044 has been recorded to asset write-downs and strategic charges.

In addition to these strategic charges, in 2001, the Company recorded a charge of $2,000 to write-off the entire carrying amount of its cost method investment in I-Jam. This charge has been recorded to asset write-downs and strategic charges. The Company has determined that an other than temporary decline in the value of this investment has occurred in 2001 triggered by a strategic change in the direction of the investee as a result of continued losses and operating deficiencies, along with projected future losses.

(4) FIXED ASSETS
Fixed Assets consist of the following as of December 31,:

	2003
Capital leases, equipment and related software..........................	$ 825
Furniture and fixtures..	82
Leasehold improvements..	74

Web site development costs	57
Total	1,038
Accumulated depreciation	(811)
	$ 227

Depreciation expense for the years ended December 31, 2003, 2002 and 2001 was $146, $221 and $601, respectively.

(5) ASSET ACQUISITIONS

On March 1, 2002, the Company acquired inventory, licensing agreements and certain other assets, used by Great American Audio in connection with its old-time radio business, including the exclusive license to "The Shadow" radio programs. The Company expended $379 in cash at closing, including fees and expenses. Additional payments of nine monthly installments of $74 commenced on June 15, 2002. Other costs related to the asset purchase were $39. The allocation of asset value was as follows:

Other assets	$ 5
Net Inventory	60
Royalty Advances (The Shadow)	10
Goodwill	1,009
Total	$1,084

(6) GOODWILL AND OTHER INTANGIBLES

In June 2001, the Financial Accounting Standards Board ("FASB") issued SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"). The Company adopted SFAS 142 on January 1, 2002. SFAS 142 changed the accounting for goodwill and indefinite-lived intangible assets from an amortization method to an impairment-only approach. Goodwill and indefinite-lived intangible assets are tested for impairment annually or when certain triggering events require such tests and are written down, with a resulting charge to operations, only in the period in which the recorded value of goodwill and indefinite-lived intangible assets is more than their fair value.

In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets", the Company ceased amortization of goodwill as of January 1, 2002. The following table presents annual results of the Company on a comparable basis:

	FOR THE YEAR ENDED	
	2003	2002
NET INCOME (LOSS):		
Reported net loss applicable to common shares	$ (6,869)	$ (2,5
Goodwill amortization	---	-
Adjusted net loss	$ (6,869)	$ (2,5
BASIC AND DILUTED LOSS PER COMMON SHARE:		
Reported basic and diluted loss per common share	$ (.49)	$ (.1
Goodwill amortization	---	--
Adjusted basic and diluted loss per common share	$ (.49)	$ (.1

SFAS 142 requires the Company to perform an evaluation of whether goodwill is impaired as of January 1, 2002, the effective date of the statement for the Company. The Company completed the transitional impairment test as of January 1, 2002, and its annual impairment tests as of October 31, 2003 and 2002, none of which resulted in an impairment loss. Any future impairment losses incurred will be reported in operating results.

The following is a reconciliation of changes in the carrying amounts of goodwill for the Radio Spirits reportable segment for each of 2003 and 2002:

	2003	2002
Balance at January 1,	$ 9,871	$ 8,649
Goodwill acquired during the year	--	1,222
Finalization of GAA asset purchase allocation	(213)	--
Ending Balance	$ 9,658	$ 9,871

During the fourth quarter of 2002, the Company reviewed the carrying amounts of its intangible assets and determined, based on decisions made in the fourth quarter of 2002, that the value of certain intangible assets could no longer be supported by anticipated future operations. Specifically, the Company made a strategic decision to no longer compete in the DVD market and accordingly wrote off the value of certain video and DVD rights it had acquired in the amount of $90. The Company also made the strategic decision in the fourth quarter of 2002 to discontinue future mailings to the Columbia House lists of members of other clubs, which could not support the remaining carrying value of the Columbia House mailing agreement. Accordingly, in the fourth quarter of 2002, the Company wrote off the remaining value of the Columbia House mailing agreement of $986.

Amortization of intangible assets was $181, $1,093 and $4,027 for the years ended December 31, 2003, 2002 and 2001, respectively. The Company estimates intangible amortization expenses of $54 in 2004.

The following table presents details of other intangibles at December 31, 2003 and December 31, 2002:

	DECEMBER 31,2003			DECEMBER 31, 2002	
	COST	ACCUMULATED AMORTIZATION	NET	COST	ACCUMULATED AMORTIZATION
Mailing Agreements	$ 592	$ 592	$ --	$ 592	$ 524
Customer Lists	4,380	4,380	--	4,380	4,380
Non-Compete Agreements	313	264	49	200	151
Other	5	--	5	5	--
Total Other Intangibles	$ 5,290	$ 5,236	$ 54	$ 5,177	$ 5,055

(7) DEBT

AS OF DECEMBER 31,	2003
Credit agreement, senior secured bank debt	$ 2,925
Note to Seller of GAA assets	--
Subordinated debt	3,200
October 2004 Notes and related accrued interest, net of original issue discount	982
Related party notes and related accrued interest, net of original issue discount	10,643
	17,750
Less: current maturities	(17,750)
	$ --

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Senior Credit Facility
Since November 1999, the Company has not been permitted to make any additional borrowings under the Credit Agreement. The interest rate on the credit facility is equal to the prime rate p1/2 2 1/2%. The weighted average interest rate for the years ended December 31, 2003 and 2002 was 6.44% and 6.76%, respectively.

In January and February 2004, the Company made principal payments of $1,538 and the balance of Senior Credit Facility as of April 12, 2004 is $1,387. The maturity date of the Senior Credit Facility was extended to September 30, 2004; provided however, that the Company is required to make monthly payments of principal of $107 through August 2004.

The Company was in compliance with its debt covenants at December 31, 2003.

Subordinated Debt
In August 2002, ABC Investment LLC, a third party holder of subordinated debt converted principal amount of $1,000 into 200,000 shares of the Company's common stock. At December 31, 2003, the principal amount of the subordinated debt held by ABC Investment LLC is $3,200. The note is currently convertible into shares of common stock at the rate of $3.04 per share, subject to adjustment for below conversion price issuances of securities. The note bears interest at the rate of 9% per annum, quarterly, in arrears. The note is due December 31, 2004. The Company is prohibited from incurring additional indebtedness (with exceptions), selling all or substantially all of its assets and materially changing the nature of its business without the prior written consent of the holder of this note.

October 2003 Notes
On October 1, 2003, the Company issued $1,065 principal amount of notes due October 1, 2004. The notes bear interest at the rate of 18%, provide for accrual of interest to maturity and have no prepayment penalty. In connection with the issuance of the notes, the Company issued to the investors, five year warrants to purchase 266,250 shares of MediaBay common stock at an exercise price of $0.80, the closing price of the stock on September 30, 2003. The Company agreed to issue the investors warrants to purchase an additional 266,250 shares of MediaBay common stock on April 1, 2004, if the notes have not been repaid. The notes are due on October 1, 2004, however, if the Company raises more than $5,000 million in financing prior to the maturity date of the notes, the maturity date of the notes is accelerated. Carl Wolf and a company wholly owned

by Norton Herrick each purchased $100 principal amount of the notes.

Related Party Debt
NH Irrevocable ABC Trust
The Trust holds a $500 principal amount 9% Convertible Senior Subordinated Promissory Note due September 30, 2007, except that the holder may demand repayment of the unpaid principal balance and interest on the note, commencing December 31, 2004, if the Company has repaid all of its obligations under the Senior Credit Agreement.

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This note is convertible into shares of common stock at the rate of $.56 per share, subject to adjustment for below conversion price issuances of securities. This note bears interest at the rate of 9% per annum. Interest is payable monthly, in arrears, in cash or, at the holder's option, shares of common stock; provided, however, that cash interest accrues until 10 days after the Company has repaid its obligations under the Senior Credit Agreement.

The Company is prohibited from incurring additional indebtedness (with exceptions), selling all or substantially all of its assets and materially changing the nature of its business without the prior written consent of the holder of this note.

Norton Herrick
Norton Herrick holds a $1,984 principal amount Convertible Senior Subordinated Promissory Note due September 30, 2007, except that the holder has the right to demand repayment of the unpaid principal balance of, and interest on, the note at any time on or after the later of (i) December 31, 2004 and (ii) the date on which the Company has repaid all of our obligations under the Credit Agreement.

Interest on this note accrues at the rate of 11% per annum and is payable on a monthly basis, at the holder's option, in cash or common stock; provided, however, that cash interest accrues until 10 days after the Company has paid all of our obligations under the Credit Agreement. This note is convertible into shares of common stock at the rate of $.56 per share, subject to adjustment for below conversion price issuances. This note is secured by a second lien on the assets of Radio Spirits.

The Company is prohibited from incurring additional indebtedness (with exceptions), selling all or substantially all of its assets and materially changing the nature of its business without the prior written consent of the holder of this note.

Huntingdon Corporation
Huntingdon Corporation, a company wholly owned by Norton Herrick, holds the following promissory notes:

- $2,500 principal amount Convertible Senior Promissory Note (the "$2,500 Note") entered into on May 14, 2001;
- $800 principal amount Convertible Senior Subordinated Promissory Note (the "$800 Note") entered into on May 14, 2001;
- $500 principal amount Convertible Senior Promissory Note (the "$500 Note") entered into on February 22, 2002;
- $1,000 principal amount Convertible Senior Promissory Note (the "$1,000 Note") entered into on October 3, 2002;

- o $150 principal amount Convertible Senior Promissory Note (the "$150 Note") entered into on October 10, 2002; and
- o $350 principal amount Convertible Senior Promissory Note (the "$350 Note") entered into on November 15, 2002.

Each of the notes held by Huntingdon are due September 30, 2007, provided that the holder has the right, at any time on or after the date on which the Company has repaid all of our obligations under the Credit Agreement, to demand repayment of the unpaid principal balance of and interest on the note; provided, however that, with respect to the $800 Note, such demand can not be made until the (90th) day after the Company has repaid all of our obligations under the Credit Agreement.

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Each of the $2,500 Note and $500 Note bears interest at an annual rate equal to the prime rate plus 2%, the $800 Note bears interest at the rate of 12% per annum and each of the $1,000 Note, $150 Note and $350 Note bears interest at an annual rate equal to the prime rate plus 2 1/2%. Interest is payable under each note monthly, in arrears, in cash, or at the holder's option, in lieu of cash, in shares of common stock or in kind, provided, however, that cash interest accrues until 10 days after the Company has paid all of our obligations under the Credit Agreement. Interest accrues on unpaid interest under each note (since October 3, 2002 in the case of the $2,500 Note, the $500 Note and the $800 Note) at the respective interest rate of such note.

The $2,500 Note, and the $800 Note are convertible into shares of common stock at the rate of $.56 per share, subject to adjustment for below conversion price issuances of securities. The $500 Note is convertible at $2.00. Each of the $1,000 Note and the $150 Note is convertible into shares of common stock at the rate of $1.82 per share, and the $350 Note is convertible into shares of common stock at the rate of $1.25 per share. The Company agreed as consideration for Norton Herrick and Huntingdon consenting to a January 2004 financing and granting certain rights to investors in the January 2004 financing that the Company would seek shareholder approval to reduce the conversion rate of $1,000 note, the $150 note and the $500 note to $1.27. The Company's Board of Directors has determined to recommend to its shareholders to approve the foregoing and intends to submit a proposal for shareholder approval at its 2004 annual meeting of shareholders.

All of the notes held by Huntingdon are secured by a lien on a pari passu basis to the senior credit facility on substantially all of the assets of the Company and our subsidiaries, other than inventory, receivables and cash of the Company and our subsidiaries.

The Company is prohibited from incurring indebtedness (with exceptions), selling all or substantially all of its assets and materially changing the nature of its business without the prior written consent of the holder of the notes.

The Company has recorded original debt discount of $131 relating to the $1,000 Note, the $150 Note and the $350 Note representing the value of the Notes ascribed to warrants granted in the financings. The Company has determined because the conversion price was significantly higher than the market price on the dates of grant, that there was no beneficial conversion feature.

The future minimum loan payments are as follows:

Year Ending December 31,

2004	$ 18,024
Total maturities, including debt discount of $274	$ 18,024

(9) COMMITMENTS AND CONTINGENCIES

Rent expense for the years ended December 31, 2003, 2002 and 2001 amounted to $180, $291 and $272, respectively.

Operating Leases
The Company leases approximately 12,000 square feet of office space in Cedar Knolls, New Jersey pursuant to a sixty-six month lease agreement dated April 18, 2003. The Company entered into two ten-year leases on 7,000 square feet of office and warehouse space in Bethel, Connecticut and 3,000 square feet of warehouse space in Sandy Hook, Connecticut, respectively. Lease payments and mandatory capital improvement payments, starting in 2004, are $4,000 per year and $2,000 per year on the Bethel and Sandy Hook properties, respectively.

Minimum annual lease commitments including capital improvement payments under all non-cancelable operating leases are as follows:

Year ending December 31,	
2004	$ 163
2005	191
2006	194
2007	203
2008	203
Thereafter	10
Total lease commitments	$ 964

Capitalized Leases
Payments under capitalized lease obligations are $53 and $18 for the years ending December 31, 2004, 2005 and 2006, respectively.

During the year ended December 31, 2003, the Company had two capital leases. Lease payments under these agreement were $53, $53 and $40 in 2003, 2002 and 2001, respectively. The amount of equipment capitalized under the leases and included in fixed assets is $330 and net of depreciation the fixed asset balance is $94 and $156 at December 31, 2003 and 2002, respectively. The obligations under the leases included in accounts payable and accrued expenses on the consolidated balance sheets at December 31, 2003 and 2002 were $71 and $112, respectively.

Minimum annual lease commitments under capital leases are as follows:

2004	$ 53
2005	18
Total capital lease commitments	$ 71

Employment Agreements
The Company has commitments pursuant to employment agreements with certain of its officers. The Company's minimum aggregate commitments under such employment agreements are approximately $538, $446 and $75 during 2004, 2005 and 2006,

respectively.

Termination and Severance Agreements
Our minimum aggregate commitments under settlement payments under terminated employment agreements and a terminated consulting agreement are $201,000 in 2004 and $30,000 in 2005.

Licensing Agreements
The Company has numerous licensing agreements for both audiobooks and old-time radio shows with terms generally ranging from one to five years, which require the Company to pay, in some instances, non-refundable advances upon signing agreements, against future royalties. The Company is required to pay royalties based on net sales. Royalty expenses were $2,524, $3,243 and $3,199 for 2003, 2002 and 2001, respectively. Minimum advances required to be paid under existing agreements for the next five years are as follows:

2004	$ 459
2005	347
2006	228
2007	354
2008	85
2009	14
Total	$1,487

Litigation
The Company is not a defendant in any litigation. In the normal course of business, the Company is subject to threats of litigation. The Company does not believe that the potential impact of any threatened litigation, if ultimately litigated, will have a material adverse effect on the Company.

(10) STOCK OPTION AND STOCK INCENTIVE PLANS

In June 1997, the Company adopted the 1997 Stock Option Plan, pursuant to which the Company's Board of Directors may grant stock options to key employees of the Company. In June 1998, the Company amended the 1997 Stock Option Plan to authorize the grant of up to 2,000,000 shares of authorized but unissued common stock.

In March 1999, the Company's stockholders approved an amendment to the Company's Articles of Incorporation adopting the Company's 1999 Stock Incentive Plan. The 1999 Stock Incentive Plan provides for grants of awards of stock options, restricted stock, deferred stock or other stock based awards. A total of 2,500,000 shares of common stock have been reserved for issuance pursuant to the plan.

In June 2000, the Company's shareholders adopted the Company's 2000 Stock Incentive Plan, which provides for grants of awards of stock options, restricted stock, deferred stock or other stock based awards. A total of 3,500,000 shares of common stock have been reserved for issuance pursuant to the plan.

In October 2001, the Company's shareholders adopted the Company's 2001 Stock Incentive Plan, which provides for grants of awards of stock options, restricted stock, deferred stock or other stock based awards. A total of 3,500,000 shares of common stock have been reserved for issuance pursuant to the plan.

Options under the Company's option plans expire at various times between 2003 and 2011. In accordance with the plans, options generally have terms of 5 to 10 years and vest from grant date to three years.

Stock option activity under the plans is as follows:

	SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Outstanding at January 1, 2001	6,653,100	$ 6.52
Granted	898,000	1.23
Exercised	--	--
Canceled and expired	(1,561,750)	9.01
Outstanding at December 31, 2001	5,989,350	5.06
Granted	1,205,000	2.27
Exercised	(151,000)	.51
Canceled and expired	(748,750)	6.95
Outstanding at December 31, 2002	6,294,600	4.39
Granted	3,593,781	1.05
Exercised	(300,000)	.50
Canceled and expired	(1,777,500)	4.73
Outstanding at December 31. 2003	7,810,881	$2.92

Norton Herrick exercised options to purchase 300,000 shares of the Company's common stock under an option granted to him on November 23, 2001.

The per share weighted-average fair value of stock options granted during the years ended December 31, 2002, 2001 and 2000 is as follows using an accepted option-pricing model with the following assumptions and no dividend yield. The shares were granted as follows:

DATE	NO. OF SHARES	EXERCISE PRICE	ASSUMED VOLATILITY	RISK-F INTEREST
2001 GRANTS:				
First Quarter	--	$--	--	--
Second Quarter	84,000	2.07	165%	4.81%
Third Quarter	6,000	2.00	165%	4.63%
Fourth Quarter	808,000	1.14	165%	4.85%
Total	898,000			
2002 GRANTS:				
First Quarter	250,000	2.70	159%	4.42%
Second Quarter	--	--	--	--
Third Quarter	40,000	4.44	159%	3.46%
Fourth Quarter	915,000	2.06	159%	3.08%
	1,205,000			

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2003 GRANTS:				
First Quarter	40,000	$1.50	165%	4.85%
Second Quarter	--	--	--	--
Third Quarter	2,173,856	.97	165%	4.85%
Fourth Quarter	1,379,925	1.17	97%	4.00%
Total	3,593,781			

The following table summarizes information for options outstanding and exercisable at December 31, 2003:

	OPTIONS OUTSTANDING			OPT
RANGE OF PRICES	NUMBER	WEIGHTED AVERAGE REMAINING LIFE IN YEARS	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER
$0.50-1.00	2,059,856	5.35	$ 0.86	580,856
$1.01-3.00	2,330,425	5.98	1.27	637,500
$3.01-5.00	2,723,000	5.56	3.91	2,409,000
$5.01-14.88	697,600	4.50	10.69	672,850
$0.50 -14.88	7,810,881	5.54	$ 2.92	4,300,206

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At December 31, 2003, there were 1,664,500 additional shares available for grant under the 1997 Plan, 581,369 additional shares available for grant under the 1999 Plan, 1,035,250 additional shares available for grant under the 2000 Plan and 408,000 available for grant under the 2001 Plan. There was no compensation expense recorded in connection with these plans in each of the years ended December 31, 2003, 2002, and 2001.

(11) WARRANTS AND NON-PLAN OPTIONS

The Company granted non-plan options and warrants to purchase a total of 456,250 shares of the Company's common stock, 381,250 of which vested in 2003, to consultants and advisors. During the year ended December 31, 2003, warrants to purchase 1,875,000 of the Company's common stock were canceled and warrants to purchase 1,808,649 shares of the Company's common stock expired.

The following table summarizes information for warrants and non-plan options outstanding and exercisable at December 31, 2002:

	OPTIONS OUTSTANDING			OPT
RANGE OF PRICES	NUMBER	WEIGHTED AVERAGE REMAINING LIFE IN YEARS	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER

$0.10-1.00	374,250	3.90	$ 0.84	249,250
$1.01-3.00	517,500	7.98	1.86	517,500
$3.01-14.20	399,940	2.27	10.68	349,940
$0.50-14.20	1,291,690	5.03	$ 4.29	1,116,690

(12) LITIGATION SETTLEMENT

In December 1998 the Company acquired certain assets from a third party. The parties also entered into certain other agreements including a mailing agreement and a non-compete agreement. As consideration for the assets acquired and the related transactions, including the mailing agreement and the non-compete agreement, the third party received cash consideration of $30,750 and an aggregate of 325,000 shares of the Company's common stock"(the "shares") and warrants to purchase an additional 100,000 shares of the Company's common stock. The parties also entered into a Registration and Shareholder Rights Agreement pursuant to which, the Company granted the third party the right under certain circumstances, commencing December 31, 2004, to require the Company to purchase from the third party the Shares at a price of $15.00 per Share.

In 2001, the Company commenced litigation alleging, among other things, that the Company was fraudulently induced to purchase certain of the assets. On June 16, 2003, Audio Book Club, Inc. ("ABC"), a wholly owned subsidiary of MediaBay entered into a settlement agreement with respect to the lawsuit. Pursuant to the settlement agreement, ABC received $350 in cash, the return for cancellation of 325,000 shares of MediaBay common stock issued in connection with the acquisition and the termination of put rights granted to the seller in the acquisition with respect to 230,000 of the shares (put rights with respect to the remaining 95,000 shares had previously terminated). The termination of the put rights terminated a $3,450 future contingent obligation of MediaBay and results in a corresponding increase in stockholders' equity.

The calculation of the settlement of litigation recorded in Contributed Capital is as follows:

Termination of contingent put rights	$3,450
Return for cancellation of 325,000 shares of common stock	247
Cash received	350
Total received in settlement of litigation	4,047
Legal and other costs incurred in connection with the litigation	1,027
Settlement of litigation recorded in Contributed Capital	$3,020

(13) COMMON STOCK SUBJECT TO CONTINGENT PUT RIGHTS

In connection with an acquisition made in December 1998, the Company agreed to repurchase certain shares issued to the seller at various prices ranging from $7.00 to $15.00. The repurchase obligation would expire based on the stock reaching the repurchase price for a period of 10 consecutive trading days. The Company has asserted that the price targets were maintained and that the obligation has expired. The seller has disputed this assertion and asserts that the right to put 25,000 shares at a price of $14.00 per share beginning on December 31, 2003 and 50,000 shares at a price of $15.00 per share beginning on

December 31, 2005. The seller has demanded the repurchase of the 25,000 shares for $350,000.

(14) EQUITY

Series B Convertible Preferred Stock

On May 7, 2003, the Company sold 3,350 shares of a newly created Series B Convertible Preferred Stock (the "Series B Stock") with a liquidation preference of $100 per share for $335. Of the total sold, 1,400 shares ($140) were purchased by Carl Wolf, Chairman and a director of the Company, and 200 shares ($20) were purchased by John Levy, Executive Vice President and Chief Financial Officer of the Company. The holders of shares of Series B Convertible Preferred Stock will receive dividends at the rate of $9.00 per share, payable quarterly, in arrears, in cash on each March 31, June 30, September 30 and December 31; provided that payment will accrue until the Company is permitted to make such payment in cash under its Agreement with its senior lender.

The Series B Stock is convertible into shares of Common Stock into MediaBay Common Stock at a conversion rate equal to a fraction, (i) the numerator of which is equal to the number of Series B Stock times $100 plus accrued and unpaid dividends though the date of conversion and (ii) the denominator is $0.77, the average price of the Company's stock on May 6, 2003.

In the event of a liquidation, dissolution or winding up of the Company, the holders of Series B Stock shall be entitled to receive out of the assets of the Company, a sum in cash equal to $100.00 per share before any amounts are paid to the holders of the Company common stock and on a pari passu with the holders of the Series A Convertible Preferred Stock. The holders of Series B Stock shall have no voting rights, except as required by law and except that the vote or consent of the holders of a majority of the outstanding shares of Series B Stock, voting separately as a class, will be required for any amendment, alteration or repeal of the terms of the Series B Stock that adversely effects the rights, preferences or privileges of the Series B Stock.

Warrants Granted in Consideration for Non-Compete Agreements The Company also issued non-plan warrants to purchase 90,000 shares of its common stock to a former employee and consultant at prices ranging from $1.50 to $3.00 per share as part of non-competition agreements. The value of the warrants of $23 was computed using an acceptable valuation model and is being amortized over the lives of the agreements.

Exercise of Options

On July 31, 2003, Norton Herrick exercised options to purchase 300,000 shares of MediaBay common stock at an exercise price of $.50 per share pursuant to an Option Agreement dated November 23, 2001. The options were exercised on a "cash-less" basis and the closing stock price on July 31, 2003 was $.78. Accordingly, the Company issued to Mr. Herrick a certificate for 107,692 shares of MediaBay common stock.

Stock Issued to Consultants

During the year ended December 31, 2003, the Company issued 29,000 shares of common stock to a consultant as partial consideration for organizational management advisory services. The shares were valued at market on the dates of the grants and an expense ($14) for the value of the shares is included in general and administrative expenses.

Options Issued to Consultants

The Company issued 60,000 options under the Company's stock option plans and 150,000 non-plan warrants to advisors and consultants during the year ended

December 31, 2003 of which the 60,000 options and 75,000 warrants vested in 2003. The options and the vested warrants were valued at $26 using an accepted valuation method and have been included in general and administrative expenses.

Stock and Options Tendered as Payment of Settlement
The Company entered into an agreement with Norton Herrick dated November 7, 2003 (the "November Agreement") whereby Mr. Herrick agreed to pay amounts owed to the Company under Section 16(b) of the Securities Exchange Act of 1934 as a result of various transactions which are attributable to Mr. Herrick occurring within less than six months of each other that involved our securities. Mr. Herrick agreed to pay the Company the sum of $1,742, (the "Payment") by delivering to the Company for cancellation within ten (10) days of the date of the November Agreement, shares of our common stock and/or warrants to purchase shares of common stock of the Issuer with an aggregate value equal to the Payment. Under the November Agreement, the value of each share of common stock delivered under the Agreement is equal to the last sale price of our common stock on the trading day immediately prior to the date on which the shares of common stock were delivered (the "Market Price"). The value of any warrant delivered under the November Agreement is equal to the Market Price of the underlying shares less the exercise price of the warrant. Mr. Herrick delivered the shares of common stock and warrants pursuant to the November Agreement on Monday, November 17, 2003, with the value of the securities based on the Market Price on November 14, 2003 of $.94 per share of common stock. As part of the Payment, Mr. Herrick returned to the Company 1,095,372 shares of our common stock. Based on the Market Price, the aggregate value of these shares is $1,030. Also, as part of the Payment, Mr. Herrick deposited warrants to purchase 1,875,000 shares of our common stock. Based on the Market Price ($.94) less the exercise price of the warrants ($.56), the aggregate value of these warrants was $712. Of the 1,875,000 warrants deposited, 1,650,000 became exercisable May 14, 2001 and 225,000 became exercisable February 22, 2002.

Warrants Issued in Connection with Financing
In connection with the issuance of the $1,065 principal amount of notes due October 1, 2004, described in Note 7, the Company issued to the investors, five year warrants to purchase 266,250 shares of MediaBay common stock at an exercise price of $0.80, the closing price of the stock on September 30, 2003. The warrants were valued at $176, using an acceptable valuation method and the value of the warrants is being amortized over the term of the notes. Carl Wolf and a company wholly owned by Norton Herrick each purchased $100 principal amount of the notes and each received 25,000 warrants.

Options Issued to Directors
During the year ended December 31, 2003, the Company issued options to purchase 335,000 shares of its common stock to its non-employee directors. Of the options issued, 130,000 vested during 2003. The Company valued the vested options at $73 using an acceptable valuation method and recorded an expense for that amount in general and administrative expenses.

Dividends
The terms of the Company's debt agreements prohibit the Company from declaring or paying any dividends or distributions on the Company's common stock.

(14) INCOME TAXES
The Company's income tax provision for the years ended December 31, 2003, 2002 and 2001 includes a Federal deferred tax expense of $1,471, a Federal deferred tax expense of $550 and a Federal deferred tax benefit of $17,200, respectively.

Income tax expense (benefit) for the years ended December 31, 2003, 2002 and

2001 differed from the amount computed by applying the U.S. Federal income tax rate of 34% and the state income tax rate of 7% to the pre-tax loss as a result of the following:

	2003	2002
Computed tax benefit	$ (446)	$ (
Increase (decrease) in valuation allowance for Federal and State deferred tax assets	1,917	1,
Income tax expenses (benefit)	$ 1,471	$

The ultimate realization of deferred tax assets is dependent on the generation of future taxable income during the periods in which those temporary timing differences become deductible. Although realization of net deferred tax assets is not assured, management has determined that it is more likely than not that a portion of the Company's deferred tax asset relating to temporary differences between the tax bases of assets or liabilities and their reported amounts in the financial statements will be realized in future periods. Accordingly, in 2001, the Company reduced the valuation allowance for deferred tax assets in the amount of $17,200 and recorded an income tax benefit. In 2003, the deferred tax asset was reduced by approximately $1,471 for amounts, which the Company was unable to determine would be recoverable in future periods.

The tax effect of temporary differences that give rise to significant portions of the deferred tax assets are as follows:

Deferred tax assets:	2003	
Federal and state net operating loss carry-forwards	$ 22,362	
Loss in I-Jam, LLC	85	
Accounts receivable, principally due to allowance for doubtful accounts and reserve for returns	1,408	
Inventory, principally due to reserve for obsolescence	584	
Fixed assets/Intangibles	13,984	
Beneficial conversion feature	156	
Total net deferred tax assets	38,579	
Less valuation allowance	(23,826)	
Net deferred tax assets	$ 14,753	$

The Company has approximately $54,660 of net operating loss carry-forwards, which may be used to offset possible future earnings, if any, in computing future income tax liabilities. The net operating losses will expire between December 31, 2018 and December 31, 2023 for federal income tax purposes. For state purposes, the net operating losses will expire at varying times between 2006 and 2013, as the Company is subject to corporate income tax in several states. Under Section 382 of the Internal Revenue Code of 1986, utilization of prior net operating losses is limited after an ownership change, as defined in Section 382, to an annual amount equal to the value of the corporation's outstanding stock immediately before the date of the ownership change multiplied by the long-term tax exempt rate. The equity financing the Company obtained in 2000 and 2004 may result in an ownership change and, thus, may limit the use of prior net operating losses.

(15) NET LOSS PER SHARE OF COMMON STOCK

Basic net loss per share is computed by dividing net loss by the weighted average number of common shares outstanding during the applicable reporting periods. The computation of diluted net loss per share is similar to the computation of basic loss per share except that the denominator is increased to include the number of additional common shares that would have been outstanding if the dilutive potential common shares had been issued.

Basic and diluted loss per share were computed using the weighted average number of shares outstanding for the years ended December 31, 2003, 2002 and 2001 of 14,098, 14,086 and 13,862, respectively.

Common equivalent shares of 16,969 including 15,909 relating to convertible subordinated debt and convertible preferred stock were not included in the calculation of fully diluted shares because they were anti-dilutive. Interest expense and dividends on the convertible subordinated debt and convertible preferred stock that were not added back to net loss were $1,150 for the year ended December 31, 2003.

Common equivalent shares of 17,916 including 15,913 relating to convertible subordinated debt and convertible preferred stock were not included in the calculation of fully diluted shares because they were anti-dilutive. Interest expense and dividends on the convertible subordinated debt and convertible preferred stock that were not added back to net loss were $1,134 for the year ended December 31, 2002.

Common equivalent shares totaling 11,787, including 11,520 shares associated with the conversion of $12,484 of convertible debt and the related reduction in interest expense for the twelve-month period ended December 31, 2001 of $1,070, were not included in the computation of diluted loss per share for the year ended December 31, 2001 because they would have been anti-dilutive.

(16) SUPPLEMENTAL CASH FLOW INFORMATION

No cash has been expended for income taxes for the years ended December 31, 2003, 2002 and 2001. Cash expended for interest was $537, $766 and $1,095 for the years ended December 31, 2003, 2002 and 2001, respectively.

The Company had the following non-cash activities for the years ended December 31, 2003, 2002, and 2001:

	2003	20
E-Data patent rights acquisition.....................................	$ --	$

Conversions of subordinated notes into common shares..................	__	1
Conversion of notes into preferred shares.............................	__	2
Stock tendered as payment for exercise of options.....................	150	
Settlement of litigation..	3,697	

(17) RELATED PARTY TRANSACTIONS

Companies wholly owned by Norton Herrick, a principal shareholder, have in the past provided accounting, administrative, legal and general office services to the Company at cost since its inception. Companies wholly owned by Norton Herrick have also assisted the Company in obtaining insurance coverage without remuneration. The Company paid or accrued to these entities $88, $430 and $292 for these services during the years ended December 31, 2001, 2002 and 2003, respectively. In addition, a company wholly owned by Norton Herrick provided the Company access to a corporate airplane during 2001 and 2002. The Company generally paid the fuel, fees and other costs related to its use of the airplane directly to the service providers. For use of this airplane, the Company paid rental fees of approximately $14 in each of 2001 and 2002 to Mr. Herrick's affiliate. As of December 31, 2003 the Company owed to Mr. Herrick and his affiliates $895 for reimbursement of such expenses and services.

On May 1, 2003, the Company entered into a two-year consulting agreement with XNH Consulting Services, Inc. ("XNH"), a company wholly-owned by Norton Herrick. The agreement provides, among other things that XNH will provide consulting and advisory services to the Company and that XNH will be under the direct supervision of the Company's Board of Directors. For its services, the Company agreed to pay XNH a fee of $8 per month and to provide Mr. Herrick with health insurance and other benefits applicable to its officers to the extent such benefits may be provided under the Company's benefit plans. The consulting agreement provides that the indemnification agreement with Mr. Herrick entered into on November 15, 2002 pursuant to which, the Company agreed to indemnify Mr. Herrick to the maximum extent permitted by the corporate laws of the State of Florida or, if more favorable, the Company's Articles of Incorporation and By-Laws in effect at the time the agreement was executed, against all claims (as defined in the agreement) arising from or out of or related to Mr. Herrick's services as an officer, director, employee, consultant or agent of the Company or any subsidiary or in any other capacity shall remain in full force and effect and to also indemnify XNH on the same basis. Mr. Herrick resigned as the Company's Chairman effective May 1, 2003 and the Company and Mr. Herrick terminated the employment agreement signed as of November 2, 2002 on May 1, 2003.

Effective December 31, 2003, the Company agreed with Norton Herrick to the consulting agreement with XNH. In connection with the termination, the Company agreed to pay XNH a fee of $7.5 per month for 16 months commencing on January 1, 2004 and to provide Mr. Herrick with health insurance and other benefits applicable to our officers to the extent such benefits may be provided under our benefit plans. The termination agreement provides that the indemnification agreement with Mr. Herrick shall remain in full force and effect and to also indemnify XNH on the same basis. In connection with the termination agreement Herrick and XNH agreed that the non-competition and nondisclosure covenants of the XNH consulting agreement were extended to survive until December 31, 2006.

On May 7, 2003, the Company sold 3,350 shares of a newly created Series B Convertible Preferred Stock (the "Series B Stock") with a liquidation preference of $100 per share for $335. Of the total sold, 1,400 shares ($140), were purchased by Carl Wolf, Chairman and a director of the Company, and 200 shares

($20) were purchased by John Levy, Executive Vice President and Chief Financial Officer of the Company. The holders of shares of Series B Convertible Preferred Stock will receive dividends at the rate of $9.00 per share, payable quarterly, in arrears, in cash on each March 31, June 30, September 30 and December 31; provided that payment will accrue until the Company is permitted to make such payment in cash under its Credit Agreement with its senior lender.

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The Series B Stock is convertible into shares of Common Stock into MediaBay Common Stock at a conversion rate equal to a fraction, (i) the numerator of which is equal to the number of Series B Stock times $100 plus accrued and unpaid dividends though the date of conversion and (ii) the denominator is $0.77, the average price of our stock on May 6, 2003.

In the event of a liquidation, dissolution or winding up of the Company, the holders of Series B Stock shall be entitled to receive out of our assets, a sum in cash equal to $100 per share before any amounts are paid to the holders of our common stock and on a pari passu basis with the holders of the Series A Convertible Preferred Stock. The holders of Series B Stock shall have no voting rights, except as required by law and except that the vote or consent of the holders of a majority of the outstanding shares of Series B Stock, voting separately as a class, will be required for any amendment, alteration or repeal of the terms of the Series B Stock that adversely effects the rights, preferences or privileges of the Series B Stock.

On July 31, 2003, Norton Herrick exercised options to purchase 300,000 shares of MediaBay common stock at an exercise price of $.50 per share pursuant to an Option Agreement dated November 23, 2001. The options were exercised on a "cash-less" basis and the closing stock price on July 31, 2003 was $.78. Accordingly, the Company issued to Mr. Herrick a certificate for 107,692 shares of MediaBay common stock.

During the three months ended September 30, 2003, Norton Herrick provided a $100 guarantee to a vendor. The Company subsequently paid the vendor and the guarantee expired. Mr. Herrick received no compensation and did not profit from the transaction.

During the three months ended September 30, 2003, Mr. Herrick also loaned the Company $100, the loan was subsequently converted into an investment by Huntingdon Corporation, a company wholly-owned by Mr. Herrick, in the $1,065 bridge financing completed on October 1, 2003. Carl Wolf, our Chairman, also purchased a $100 note in this financing. In consideration, the Company issued to each of Huntingdon and Mr. Wolf a $100 principal amount note due October 1, 2004. The notes are identical to all other notes issued in the financing and bear interest at the rate of 18% per annum, payable at maturity. In connection with the issuance of the notes, the Company agreed, subject to receipt of shareholder approval, to issue to each of Huntingdon and Mr. Wolf warrants to purchase 25,000 shares of common stock at an exercise price of $.80 and agreed to issue to each of them warrants to purchase an additional 25,000 shares of common stock if the notes are not repaid on April 1, 2004 at an exercise price per share equal to the closing sale price of our common stock on March 31, 2004.

The Company entered into an agreement with Norton Herrick dated November 7, 2003 (the "November Agreement") whereby Mr. Herrick agreed to pay amounts owed to the Company under Section 16(b) of the Securities Exchange Act of 1934 as a result of various transactions which are attributable to Mr. Herrick occurring within less than six months of each other that involved our securities. Mr. Herrick agreed to pay the Company the sum of $1,742, (the "Payment") by delivering to the Company for cancellation within ten (10) days of the date of the November

Agreement, shares of our common stock and/or warrants to purchase shares of common stock of the Issuer with an aggregate value equal to the Payment. Under the November Agreement, the value of each share of common stock delivered under the Agreement is equal to the last sale price of our common stock on the trading day immediately prior to the date on which the shares of common stock were delivered (the "Market Price"). The value of any warrant delivered under the November Agreement is equal to the Market Price of the underlying shares less the exercise price of the warrant. Mr. Herrick delivered the shares of common stock and warrants pursuant to the November Agreement on Monday, November 17, 2003, with the value of the securities based on the Market Price on November 14, 2003 of $.94 per share of common stock. As part of the Payment, Mr. Herrick returned to the Company 1,095,372 shares of our common stock. Based on the Market Price, the aggregate value of these shares is $1,030. Also, as part of the Payment, Mr. Herrick deposited warrants to purchase 1,875,000 shares of our common stock. Based on the Market Price ($.94) less the exercise price of the warrants ($.56), the aggregate value of these warrants was $712. Of the 1,875,000 warrants deposited, 1,650,000 became exercisable May 14, 2001 and 225,000 became exercisable February 22, 2002.

On January 29, 2004, the Company issued $4,000 aggregate principal amount of promissory notes (the "2004 Notes") and warrants to purchase 2,352,946 shares of common stock (the "Investor Warrants") to 13 institutional and accredited investors (the "Offering"). The 2004 Notes are due on the earlier of (i) April 30, 2005, (ii) such date on or after July 1, 2004 at such time as all of the our indebtedness under our existing credit facility is either repaid or refinanced or (iii) the consummation by the Company of a merger, combination or sale of all or substantially all of our assets or the purchase by a single entity, person or group of affiliated entities or persons of 50% of our voting stock. The 2004 Notes bear interest at the rate of 6%, increase to 9% on April 28, 2004 and 18% on July 27, 2004. In connection with this offering, Norton Herrick and Huntingdon entered into a letter agreement with the purchasers of the 2004 Notes pursuant to which they granted to the holders of the 2004 Notes in the event of an Event of Default (as defined in the 2004 Notes) the rights to receive payment under certain secured indebtedness owed by the Company to Norton Herrick and Huntingdon and to exercise their rights under security agreements securing such secured indebtedness. Pursuant to the letter agreement, Norton Herrick and Huntingdon also executed Powers of Attorney in favor of a representative of the 2004 Note holders pursuant to which such representative may, following an Event of Default, take actions necessary to enforce the 2004 Note holders rights under the Letter Agreement, including enforcing Norton Herrick's and Huntingdon's rights under the security agreements. In consideration for Huntingdon's consent to the Financing and agreements to upon receipt of Shareholders' Approval , the Company reduced the conversion price of $1,150 principal amount of convertible promissory notes held by Huntingdon from $2.00 to $1.27 and $500 principal amount of convertible promissory notes held by Huntingdon from $1.82 to $1.27.

In 2003 and 2002, Norton Herrick advanced $360 and $372, respectively, to certain of our vendors and professional firms as payment of amounts owed to them. As the Company made payments to these vendors, the vendors repaid the amounts advanced to them by Mr. Herrick. Mr. Herrick received no interest or other compensation for advancing the monies. As of April 12, 2004, none of the advances were outstanding.

(18) RECENT ACCOUNTING PRONOUNCEMENTS

In April 2002, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 145 ("SFAS 145"), "Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical

Corrections," which is effective for fiscal years beginning after May 15, 2002, with earlier application encouraged. Under SFAS 145, gains and losses from extinguishment of debt will no longer be aggregated and classified as an extraordinary item, net of related income tax effect, on the statement of earnings. The adoption of SFAS 145 had no impact on the Company's financial position or results of operations.

In June 2002, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 146 ("SFAS 146"), "Accounting for Costs Associated with Exit or Disposal Activities," which is effective for exit or disposal activities that are initiated after December 31, 2002, with early application encouraged. SFAS 146 requires recognition of a liability for the costs associated with an exit or disposal activity when the liability is incurred, as opposed to when the entity commits to an exit plan as required under EITF Issue No. 94-3. SFAS 146 will primarily impact the timing of the recognition of costs associated with any future exit or disposal activities. The adoption of SFAS 146 had no impact on its financial position or results of operations.

In November 2002, the FASB issued interpretation No. ("FIN") 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," which requires that guarantees within the scope of FIN 45 issued or amended after December 31, 2002, a liability for the fair value of the obligation undertaken in issuing the guarantee, be recognized at the inception of the guarantee. The effective date for this FIN 45 is for fiscal years ending after December 15, 2002. The adoption of FIN 45 had no impact on its financial position or results of operations.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock Based Compensation", which amends SFAS No. 123 to provide alternative methods of transaction for an entity that voluntarily changes to the fair value method of accounting for stock based compensation. It also amends the disclosure provisions of SFAS No. 123 to require prominent disclosure about the effects on reported net income of an entity's accounting policy decisions with respect to stock based employee compensation. Finally, SFAS No. 148 amends APB Opinion No. 28, "Interim Financial Reporting", to require disclosure of those effects in interim financial statements. SFAS No. 148 is effective for fiscal years ended after December 15, 2002, but early adoption is permitted. Accordingly, the Company has adopted the applicable disclosure requirements of this Statement within this report. The adoption of SFAS No. 148 did not have a significant impact on the Company's financial disclosures.

In January 2003, the FASB issued FIN 46, "Consolidation of Variable Interest Entities," which is effective for interim periods beginning after December 15, 2003. This interpretation changes the method of determining whether certain entities should be included in the Company's consolidated financial statements. An entity is subject to FIN 46 and is called a variable interest entity ("VIE") if it has (1) equity that is insufficient to permit the entity to finance its activities without additional subordinated financial support from other parties, or (2) equity investors that cannot make significant decisions about the entity's operations or that do not absorb the expected losses or receive the expected returns of the entity. All other entities are evaluated for consolidation under SFAS No. 94, "Consolidation of All Majority-Owned Subsidiaries." A VIE is consolidated by its primary beneficiary, which is the party involved with the VIE that has a majority of the expected losses or a majority of the expected residual returns or both. The Company currently evaluating FIN 46 and believes that it will have no impact on its financial position or results of operations.

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement 33 on Derivative Instruments and Hedging Activities", which amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities that fall within the scope of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities". SFAS No. 149 amends SFAS No. 133 regarding implementation issues raised in relation to the application of the definition of a derivative. The amendments set forth in SFAS No. 149 require that contracts with comparable characteristics be accounted for similarly. This Statement is effective for contracts entered into or modified after June 30, 2003, with certain exceptions, and for hedging relationships designated after June 30, 2003. The adoption of SFAS No. 149 did not have a material impact on the Company's financial position or results of operations.

On May 15, 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS 150 provides guidance on classification and measurement of certain financial instruments with characteristics of both liabilities and equity. The Company reclassified certain items to debt as a result of the SFAS 150.

(19) SEGMENT REPORTING

For 2003, 2002 and 2001, the Company has divided its operations into four reportable segments: Corporate, Audio Book Club ("ABC") a membership-based club selling audiobooks in direct mail and on the Internet; Radio Spirits ("RSI") which produces, sells, licenses and syndicates old-time radio programs and MediaBay.com a media portal offering spoken word audio content in secure digital download formats. Segment operating income is total segment revenue reduced by operating expenses identifiable with that business segment. Corporate includes general corporate administrative costs, professional fees and interest expenses. The Company evaluates performance and allocates resources among its three operating segments based on operating income and opportunities for growth. The Company evaluates performance and allocates resources among its three operating segments based on operating income and opportunities for growth. RadioClassics, which was created to distribute the Company's proprietary old-time radio content across multiple distribution platforms including traditional radio, cable television, satellite television (DBS), satellite radio and the Internet, is aggregated with RSI for segment reporting purposes. Inter-segment sales are recorded at prevailing sales prices.

The accounting policies of the reportable segments are the same as those described in Note 3. Inter-segment sales are recorded at prevailing sales prices.

YEAR ENDED DECEMBER 31, 2003

	CORPORATE	ABC	RSI	MBAY
Sales	$ --	$ 26,379	$ 10,247	$
(Loss) profit before asset write-downs and strategic charges, severance and other termination costs, non-cash write-down of intangibles,				

depreciation, amortization interest expense, income tax expense and dividends on preferred stock	(2,407)	455	846
Depreciation and amortization	180	106	42
Asset write-downs and strategic charges	749	--	--
Severance and other termination costs	544	--	--
Interest expense	1,913	--	12
Income tax (expense)		(1,200)	(271)
Dividends on preferred stock	246	--	--
Net (loss) income applicable to common shares	(6,039)	(851)	521
Total assets		24,312	14,613
Purchase of fixed assets	--	14	2

YEAR ENDED DECEMBER 31, 2002

	CORPORATE	ABC	RSI	MBAY
Sales		$ 34,342	$ 11,348	$
(Loss) profit before non-cash write-down of intangibles, depreciation, amortization interest expense, income tax expense and dividends on preferred stock	(3,233)	5,281	2,141	
Depreciation and amortization	--	1,217	97	
Interest expense	2,903	--	71	
Non-cash write-down of intangibles		1,134	90	
Income tax (expense)		(449)	(101)	
Dividends on preferred stock	217	--	--	
Net (loss) income applicable to common shares	(6,353)	2,481	1,782	
Total assets	--	31,225	17,454	
Purchase of fixed assets	--	100	11	

YEAR ENDED DECEMBER 31, 2001

	CORPORATE	ABC	RSI	MBAY
Sales	$ --	$ 31,793	$ 10,021	$
(Loss) profit before asset write-downs and strategic charges, depreciation, amortization, interest expense and income tax benefit	(2,239)	2,058	15	(1
Asset write-downs and strategic charges	2,000	6,031	4,342	
Depreciation and amortization	--	3,942	910	
Interest expense	2,779	--	11	
Income tax benefit	--	14,035	3,165	
Net (loss) income applicable to common shares	(7,018)	6,120	(2,083)	(2
Total assets	--	27,740	16,785	
Purchase of fixed assets	--	58	130	

(20) QUARTERLY OPERATING DATA (UNAUDITED)

The following table presents selected unaudited operating data of the Company for each quarter in the three year period ended December 31, 2003.

YEAR ENDED DECEMBER 31, 2003	1ST QUARTER		2ND QUARTER	3RD QUARTER
Sales	$ 10,697		$ 9,407	$ 9,572
Cost of sales	5,234		4,124	4,252
Net (loss) income applicable to common shares	(1,537)		(228)	285
Basic and diluted income (loss) per share:				
Basic earnings (loss) per common share	$ (.11)		$ (.02)	$ .02
Diluted earnings (loss) per common share	$ (.11)		$ (.02)	$ .02

YEAR ENDED DECEMBER 31, 2002	1ST QUARTER		2ND QUARTER	3RD QUARTER
Sales	$ 9,480		$ 11,977	$ 11,267
Cost of sales	4,289		5,194	5,241
Net (loss) applicable to common shares	(759)		338	(187)
Basic and diluted income (loss) per share:				
Basic earnings (loss) per common share	$(0.05)		$ 0.02	$ (.01)
Diluted earnings (loss) per common share	$(0.05)		$ 0.02	$ (.01)

YEAR ENDED DECEMBER 31, 2001	1ST QUARTER		2ND QUARTER	3RD QUARTER
Sales	$9,601		$ 10,915	$ 9,879
Cost of sales	3,816		5,455	5,285
Cost of sales - write-downs	--		--	2,261
Net income (loss)	10,591	(*)	(2,151)	(16,955)
Basic and diluted income (loss) per share:				
Basic earnings (loss) per common share	$ 0.77	(*)	$(0.16)	$(1.22)
Diluted earnings (loss) per common share	$ 0.58	(*)	$(0.16)	$(1.22)

(*) Includes a reduction in the valuation allowance for deferred tax assets in the amount of $13,000.

(**) Includes asset write-downs and strategic charges in addition to cost of sales write-downs of $11,015.

(***) Includes asset write-downs and strategic charges of the Company's Audio Passages audiobook club of $749 and severance and other termination costs of $544, relating to the termination of three senior executives with employment agreements and termination of a consulting agreement and income tax expense of $1,417 related to utilization of deferred tax assets.

(****) Includes write-down of intangible assets of $1.2 million and income tax expense of $550 related to utilization of deferred tax asset.

(*****) Includes a reduction in the valuation allowance for deferred tax assets in the amount of $4,200.

(21) SUBSEQUENT EVENTS

From January 1, 2004 to April 12,2004 the Company issued options to purchase

1,650,000 shares of its common stock to certain directors, employees and consultants to the Company under its 2001 Stock Option plan. The Company also cancelled options to purchase 1,774,500 shares of its common stock.

On January 29, 2004, the Company issued $4,000 aggregate principal amount of promissory notes (the "Notes") and warrants to purchase 2,352,946 shares of common stock (the "Investor Warrants") to 13 institutional and accredited investors (the "Offering"). The notes are due on the earlier of (i) April 30, 2005, (ii) such date on or after July 1, 2004 at such time as all of the Company's indebtedness under its existing credit facility is either repaid or refinanced or (iii) the consummation by the Company of a merger, combination or sale of all or substantially all of the Company's assets or the purchase by a single entity, person or group of affiliated entities or persons of 50% of the Company's voting stock. The notes bear interest at the rate of 6%, increase to 9% on April 28, 2004 and 18% on July 27, 2004. In connection with the Offering, Norton Herrick and Huntingdon entered into a letter agreement (the "Letter Agreement") with the purchasers of Notes in the Offering pursuant to which they granted to the holders of the Notes in the event of an Event of Default (as defined in the Notes) the rights to receive payment under certain secured indebtedness owed by the Company to Norton Herrick and Huntingdon and to exercise their rights under security agreements securing such secured indebtedness. Pursuant to the Letter Agreement, Norton Herrick and Huntingdon also executed Powers of Attorney in favor of a representative of the Note holders pursuant to which such representative may, following an Event of Default, take actions necessary to enforce the Note holders rights under the Letter Agreement, including enforcing Norton Herrick's and Huntingdon's rights under the security agreements. In consideration for Huntingdon's consent to the Financing and agreements, upon receipt of Shareholders' Approval, the Company will reduce the conversion price of the Huntingdon Notes to $1.28.

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In accordance with the Notes, the principal amount of the notes automatically converted into common Stock at the rate of one share of common stock at $0.75, or approximately 5,333,333 shares, on receipt of Shareholder approval, which was received on April 12, 2004. In addition accrued interest in the amount $49 also converted into common stock at $0.75 per share, or 64,877 shares.

In connection with the Offering, the Company issued to Rockwood, Inc. ("Rockwood"), the placement agent, and a broker warrants to purchase an aggregate of 245,000 shares of common stock and also issued to Rockwood warrants to purchase an additional 500,884 shares of Common Stock on April 12, 2004 as partial consideration for Rockwood's services as placement agent. All warrants issued are exercisable until January 28, 2009 at an exercise price of $1.28 per share.

The following pro forma balance sheet reflects the effects of the receipt of the $4,000 million debt, less offering fees and expenses of $531, and the subsequent conversion of the subordinated debt to common stock on stockholder approval, as if the transactions had occurred on December 31, 2003:

MEDIABAY, INC.
CONSOLIDATED BALANCE SHEETS
(DOLLARS IN THOUSANDS)

PRO FORMA TO REFLECT RECEIPT OF $4,000 CONVERTIBLE NOTES OFFERING
AND SUBSEQUENT CONVERSION OF SUCH NOTES TO EQUITY.

	HISTORICAL DECEMBER 31, 2003	PRO FORMA ADJUSTMENTS DR (CR)	NOTES	PRO FORMA DECEMBER 2003
ASSETS				
Current Assets:				
Cash and cash equivalents	$ 683	$ 3,469	(1)	$ 2,902
		$ (1,250)	(2)	
Accounts receivable, net	3,264	-		3,264
Inventory	4,063	-		4,063
Prepaid expenses and other current assets	215	-		215
Royalty advances	804	-		804
Total current assets	9,029	2,219		11,248
Fixed assets, net	227	-		227
Deferred member acquisition costs	3,172	-		3,172
Deferred income taxes	14,753	-		14,753
Other intangibles	54	-		54
Goodwill	9,658	-		9,658
	$ 36,893	$ 2,219		$ 39,112
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Accounts payable and accrued expenses	$ 10,268	$ -		$ 10,268
Accounts payable, related parties	826	-		826
Common stock subject to contingent put rights, current portion	350	-		350
Short-term debt	7,107	1,250	(2)	5,857
Related party short-term debt	10,643	-		10,643
Total current liabilities	29,194	1,250		27,944
Common stock subject to contingent put rights	750	-		750
				-
Commitments and Contingencies	-	-		-
				-
Preferred stock	2,828			2,828
Common stock	94,567	(3,469)	(1)	98,036
Contributed capital	11,569	(1,164)	(3)	16,724
		(3,991)	(4)	
(3,188) (4)				
Accumulated deficit	(102,015)	1,164	(3)	(107,170
		3,991	(4)	
Total common stockholders' equity	6,949	(3,469)		10,418
	$ 36,893	$ (2,219)		$ 39,112

NOTES TO PRO FORMA CONSOLIDATED BALANCE SHEET AS OF DECEMBER 31, 2003:

(1) To record receipt of $4,000 convertible notes, less offering fees and expenses of $531, and conversion of such notes to common stock on approval by stockholders which was recived on April 12, 2004.

(2) To record principal payment to senior lender made on receipt of funds from the convertible notes offering.

(3) To record value of warrants issued to investors and agents in the convertible notes offering and subsequent expense.

(4) To record value of beneficial conversion feature in the convertible notes offering and subsequent expense.

SCHEDULE II -- VALUATION AND QUALIFYING ACCOUNTS AND RESERV

FOR THE YEARS ENDED DECEMBER 31, 2002, 2001 AND 2000

	BALANCE BEGINNING OF PERIOD	AMOUNTS CHARGED TO NET INCOME	AMOUNTS ACQUIRED	WRI AG RE
Allowances for sales returns and doubtful accounts:				
Year Ended December 31, 2003	$ 5,325	$ 20,900	--	$
Year Ended December 31, 2002	4,539	18,793	--	
Year Ended December 31, 2001	4,516	15,496	--	
Valuation allowance for Federal and State deferred tax assets				
Year Ended December 31, 2003	21,911	1,471	--	
Year Ended December 31, 2002	20,563	550	--	
Year Ended December 31, 2001	37,763	(17,200)	--	

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MEDIABAY, INC.

BY: /S/ JOHN F. LEVY

JOHN F. LEVY,
EXECUTIVE VICE PRESIDENT AND
CHIEF FINANCIAL OFFICER

Pursuant to the requirements of the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE

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/s/ Carl T. Wolf ------------------------------ CARL WOLF	Chairman and Director	April 12,
/s/ Jeffrey Dittus ------------------------------ JEFFREY DITTUS	Chief Executive Officer (Principal Executive Officer)	April 12,
/s/ Howard Herrick ------------------------------ HOWARD HERRICK	Director and Executive Vice President	April 12,
/s/ John F. Levy ------------------------------ JOHN F. LEVY	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	April 12,
/s/ Richard Berman ------------------------------ RICHARD BERMAN	Director	April 12,
/s/ Paul Ehrlich ------------------------------ PAUL EHRLICH	Director	April 12,
/s/ Mark Hershhorn ------------------------------ MARK HERSHHORN	Director	April 12,
/s/ Joseph Rosetti ------------------------------ JOSEPH ROSETTI	Director	April 12,