MEDIABAY INC
Form 10-Q
May 17, 2004

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

[X] QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2004

OR

[ ] TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _________ to ________

Commission file number 1-13469

MediaBay, Inc.

(Exact name of Registrant as Specified in its Charter)

Florida	65-0429858
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employment Identification No.)
2 Ridgedale Avenue, Cedar Knolls, New Jersey	07927
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (973) 539-9528

Indicate by checkmark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirement for the past 90 days.

Yes [X] No [ ]

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

Indicate the number of shares outstanding of each of the Registrant's classes of common equity, as of the latest practical date.

As of May 14, 2004, there were 18,463,624 shares of the Registrant's Common Stock outstanding.

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MEDIABAY, INC.

Quarter ended March 31, 2004
Form 10-Q
MEDIABAY, INC.

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PART I: FINANCIAL INFORMATION

ITEM 1: FINANCIAL STATEMENTS

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

	(UNAUDITED) MARCH 31, 2004	DECE
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 933	$
Accounts receivable, net of allowances for sales returns and doubtful accounts of $3,540 and $4,446 at March 31, 2004 and December 31, 2003, respectively	1,995	
Inventory	4,181	
Prepaid expenses and other current assets	322	
Royalty advances	1,317	

Total current assets	8,748	
Fixed assets, net	241	
Deferred member acquisition costs	2,535	
Deferred income taxes	14,753	
Other intangibles	41	
Goodwill	9,658	
	$ 35,976	$
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	$ 7,958	$
Accounts payable, related party	672	
Common stock subject to contingent put rights, current portion	350	
Short-term debt, net of original issue discount of $1,550 and $274 at March 31, 2004 and December 31, 2003, respectively	8,239	
Related party short-term debt, net of original issue discount of $35 and $142 at March 31, 2004 and December 31, 2003, respectively	11,033	
Total current liabilities	28,252	
Common stock subject to contingent put rights	750	
Commitments and Contingencies	--	
Preferred stock, no par value, authorized 5,000,000 shares; 25,000 shares of Series A and 3,350 shares of Series B issued and outstanding at March 31, 2004 and December 31, 2003	2,828	
Common stock; no par value, authorized 150,000,000 shares; issued and outstanding 13,065,414 and 13,057,414 at March 31, 2004 and December 31, 2003, respectively	94,567	
Contributed capital	12,762	
Accumulated deficit	(103,183)	(1
Total stockholders' equity	6,974	
	$ 35,976	$

See accompanying notes to consolidated financial statements.

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

	(UNAUDITED) THREE MONTHS END MARCH 31,	
	2004	
Sales, net of returns, discounts and allowances of $1,926 and $2,131 for the three months ended March 31, 2004 and 2002, respectively	$ 5,684	$
Cost of sales	2,570	

Gross profit	3,114	
Expenses:		
Advertising and promotion	1,359	
Bad debt expense	398	
General and administrative	1,560	
Depreciation and amortization	47	
Operating loss	(250)	
Interest expense	854	
Loss before income taxes	(1,104)	
Income taxes	--	
Net loss	(1,104)	
Dividends on preferred stock	64	
Net loss applicable to common shares	$ (1,168)	$
Basic and diluted loss per common share:		
Basic loss per common share	$ (.09)	$
Diluted loss per common share	$ (.09)	$

See accompanying notes to consolidated financial statements.

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

	(UNAUDITED) THREE MONTHS EN MARCH 31,	
	2003	
Cash flows from operating activities:		
Net loss applicable to common shares	$ (1,168)	$
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	47	
Amortization of deferred member acquisition costs	855	
Amortization of deferred financing costs and original issue discount	424	
Non-current accrued interest and dividends payable	389	
Non-cash stock compensation	48	
Changes in asset and liability accounts, net of asset acquisition:		
Decrease in accounts receivable, net	1,269	
(Increase) decrease in inventory	(118)	
(Increase) decrease in prepaid expenses	(137)	
(Increase) decrease in royalty advances	(513)	
Increase in deferred member acquisition costs	(218)	
(Decrease) increase in accounts payable and accrued expenses	(2,492)	
Net cash (used in) provided by operating activities	(1,614)	

Cash flows from investing activities:		
Acquisition of fixed assets	(47)	
Intangible assets acquired	--	
Net cash used in investing activities	(47)	
Cash flows from financing activities:		
Proceeds from issuance of short-term debt	4,000	
Payment of long-term debt	(1,538)	
Increase in deferred financing costs	(551)	
Net cash (used in) provided by financing activities	1,911	
Net increase (decrease) in cash and cash equivalents	250	
Cash and cash equivalents at beginning of period	683	
Cash and cash equivalents at end of period	$ 933	$

See accompanying notes to consolidated financial statements.

MEDIABAY, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)
(UNAUDITED)

(1) ORGANIZATION

MediaBay, Inc. (the "Company"), a Florida corporation, was formed on August 16, 1993. MediaBay, Inc. is a marketer 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.

(2) SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The interim unaudited condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements contained in its Annual Report on Form 10-K. 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 estimates. In the opinion of management, the interim unaudited financial statements include all material adjustments, all of which are of a normal recurring nature, necessary to present fairly the Company's financial position, results of operations and cash flows for the periods presented. The results for any interim period are not necessarily indicative of results for the entire year or any other interim period.

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 heavily discounted audiobooks and old-time radio programs in the initial enrollment offer to prospective members and customers)
- 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

The Company classifies the cost of certain credits, allowances, adjustments and payments given to customers for the services or benefits provided as a reduction of net sales.

Stock-Based Compensation

The Company accounts for employee stock options in accordance with Accounting Principles Board Opinion No. 25 ("APB 25"), "Accounting for Stock Issued to Employees." In October 1995, SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123") was issued. SFAS 123, which prescribes the recognition of compensation expense based on the fair value of options on the grant date, allows companies to continue applying APB 25 if certain pro forma disclosures are made assuming a hypothetical fair value method application. Had

compensation expense for the Company's stock options been recognized on the fair value on the grant date under SFAS 123, the Company's net loss and net loss per share for the three months ended March 31, 2004 and 200332 would have been as follows:

	THREE MONTHS ENDED MARCH 31, 2004	2003
Net loss applicable to common shares, as reported	$ (1,168)	$ (1,537)
Add: Stock-based employee compensation expense included in reported net loss 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	(1,163)	(36)
Pro forma net loss applicable to common shares	$ (2,331)	$ (1,573)
Net loss per share		
Basic and diluted - as reported	$ (.09)	$ (.11)
Basic and diluted - pro forma	$ (.18)	$ (.11)

No dividend yield and the following assumptions were used in the pro forma calculation of compensation expense:

DATE	NO. OF SHARES	EXERCISE PRICE	ASSUMED VOLATILITY	RISK-FREE INTEREST RATE	FAIR VALUE PER SHARE
FIRST QUARTER 2004	1,650,000	$.99-$1.86	97%	4.00%	$.66-$.75
FIRST QUARTER 2003	40,000	$1.50	165%	4.85%	$.98

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amount of existing assets and liabilities and their respective tax basis and operating loss and tax credit carryforwards. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date.

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 or radio programs 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, which has been determined to be generally 30 months for Audio Book Club advertising costs and 18 months for World's Greatest Old-Time Radio continuity program. The costs are being amortized on accelerated basis consistent with the recognition of related revenue.

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.

Reclassifications

Certain prior year amounts have been reclassified to conform to the current year presentation.

(3) GOODWILL AND OTHER INTANGIBLES

In June 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards 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.

The Company amortizes other intangible assets over their estimated useful lives over periods from three to seven years. Other intangible assets primarily relate to mailing and non-compete agreements, customer lists, and license agreements associated with the Company's Audio Book Club and Radio Spirits divisions. Amortization expense for other intangible assets was $13 and $59 for the three months ended March 31, 2004 and 2003, respectively. The Company estimates intangible amortization expenses of the following:

9 months ended December 31, 2004	$ 10
2005	8
2006	8
2007	9
2008	--
Total	$ 35

The following table presents details of Other Intangibles at March 31, 2004 and December 31, 2003:

	March 31, 2004			December 31, 2003		
	Cost	Accumulated Amortization	Net	Cost	Accumulated Amortization	Net
Mailing Agreements	$ 592	$ 592	$ --	$ 592	$ 592	$ --
Customer Lists	4,380	4,380	--	4,380	4,380	--
Non-Compete Agreements	313	277	36	313	264	49
Other	5	--	5	5	--	5
Total Other Intangibles	$ 5,290	$ 5,249	$ 41	$ 5,290	$ 5,236	$ 54

Goodwill of $9,658 as of March 31, 2004 and December 31, 2003 is attributable to the Company's Radio Spirits business. . The Company completed its annual impairment tests as of October 31, 2003, which did not result in an impairment loss.

(4) SHORT-TERM DEBT

	AS OF MARCH 31, 2004	AS OF DECEMBER 31, 2003
January 2004 Convertible Debt and related accrued ...... interest, net of original issue discount	$ 2,579	$ --
Credit agreement, senior secured bank debt	1,386	$ 2,925
Subordinated debt	3,200	3,200
October 2003 Notes and related accrued interest, net of original issue discount	1,074	982
Related party notes and related accrued interest, net of original issue discount	11,033	10,643
	$ 19,272	$ 17,750

JANUARY 2004 CONVERTIBLE DEBT

On January 29, 2004, the Company issued $4,000 aggregate principal amount of promissory notes (the "January 2004 Notes") and warrants to purchase 2,352,946 shares of common stock (the "Investor Warrants") to institutional and accredited investors (the "Offering"). The notes were 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 January 2004 Notes bore interest at the rate of 6%, increasing to 9% on April 28, 2004 and 18% on July 27, 2004. On receipt of Shareholder approval, which was received on April 12, 2004, in accordance with

the terms of the January 2004 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. 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.

In connection with the Offering, a principal shareholder and a company wholly owned by him (collectively, "Principal Shareholder") entered into a letter agreement (the "Letter Agreement") with the purchasers of January 2004 Notes in the Offering pursuant to which the Principal Shareholder granted to the holders of the Notes in the event of an Event of Default (as defined in the Notes) the rights to receive

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payment under certain secured indebtedness owed by the Company to the Principal Shareholder and to exercise their rights under security agreements securing such secured indebtedness. Pursuant to the Letter Agreement, the Principal Shareholder also executed Powers of Attorney in favor of a representative of the January 2004 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 the Principal Shareholder's rights under the security agreements.

(5) STOCKHOLDERS' EQUITY AND STOCK OPTIONS AND WARRANTS

Stock Options and Warrants

From January 1, 2004 to March 31, 2004, the Company issued options to purchase 1,650,000 shares of its common stock to certain employees and consultants to the Company under its 2001 Stock Option plan. The Company also cancelled options to purchase 1,500,000 shares of its common stock and options to purchase 152,500 shares of its common stock expired. In addition to the 2,597,946 non-plan warrants issued in connection with the January 2004 Convertible Debt described in Note 4 above, the Company cancelled non-plan warrants to purchase 25,000 shares of its common stock. Non-plan warrants to purchase 8,000 shares of our common stock at $.10 were exercised during the three months ended March 31, 2004.

(6) NET LOSS PER SHARE OF COMMON STOCK

Basic loss per share was computed using the weighted average number of common shares outstanding for the three months ended March 31, 2004 and 2003 of 13,060,051 and 14,341,376, respectively.

For the three months ended March 31, 2004, common equivalent shares, which were not included in the computation of diluted loss per share because they would have been anti-dilutive were 289,943 common equivalent shares, as calculated under the treasury stock method and 21,856353 common equivalent shares relating to convertible subordinated debt and preferred stock calculated under the "if-converted method". Interest expense on the convertible subordinated debt added back to net loss would have been $340 and preferred dividends added back to net loss applicable to common shares would have been $65

for the three months ended March 31, 2004.

For the three months ended March 31, 2003, common equivalent shares, which were not included in the computation of diluted loss per share because they would have been anti-dilutive were 986,894 common equivalent shares, as calculated under the treasury stock method and 16,634,000 common equivalent shares relating to convertible subordinated debt and preferred stock calculated under the "if-converted method". Interest expense on the convertible subordinated debt added back to net loss would have been $278 and preferred dividends added back to net loss applicable to common shares would have been $56 for the three months ended March 31, 2003.

(7) SUPPLEMENTAL CASH FLOW INFORMATION

Cash paid for interest expense was $180 and $147 for the three months ended March 31, 2004 and 2003, respectively.

(8) SEGMENT REPORTING

For 2004 and 2003, the Company has divided its operations into four reportable segments: Corporate; Audio Book Club ("ABC") a membership-based club selling audiobooks via 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, interest expenses and amortization of acquisition related costs. The Company evaluates performance and allocates resources among its three operating segments based on operating income and opportunities for growth. The Company did not expend any funds or receive any income in the three months ended March 31, 2004 and 2003 from its newest subsidiary RadioClassics. Inter-segment sales are recorded at prevailing sales prices.

SEGMENT REPORTING
THREE MONTHS ENDED MARCH 31, 2004

	CORPORATE	ABC	RSI	MBAY.COM	INTER-SEGMENT
Sales, net of returns, discounts and allowances	$ --	$ 3,726	$ 1,940	52	(34)
Operating profit (loss)	(522)	(90)	482	(120)	--
Depreciation and amortization	13	25	9	--	--
Interest expense	853	--	1	--	--
Dividends on Preferred Stock	64	--	--	--	--
Net (loss) income applicable to common shares	(1,439)	(90)	481	(120)	--
Total assets	--	22,065	13,983	--	(72)
Acquisition of fixed assets	--	38	9	--	--

SEGMENT REPORTING
THREE MONTHS ENDED MARCH 31, 2003

	CORPORATE	ABC	RSI	MBAY.COM	INTER-SEGMENT
Sales, net of returns, discounts and allowances	$ --	$ 8,106	$ 2,600	17	(26)
Operating profit (loss)	(1,225)	334	85	(157)	5

Depreciation and amortization	--	74	25	--	--
Interest expense	519	--	4	--	--
Dividends on Preferred Stock	56	--	--	--	--
Net (loss) income applicable to common shares	(1,800)	334	81	(157)	5
Total assets	--	30,170	16,549	--	(60)
Acquisition of fixed assets	--	10	1	--	--

(9) RECENT ACCOUNTING PRONOUNCEMENTS

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 has evaluated FIN 46 and it had 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.

(10) SUBSEQUENT EVENTS

Stock Options

From April 1, 2004 to May 14, 2004 options to purchase 7,000 shares of MediaBay common stock were cancelled or expired.

Conversion of January 2004 Convertible Notes

On April 12, 2004 shareholder approval was received for the issuance of 5,899,094 shares of MediaBay common stock. As a result of the approval, the January 2004 Notes were converted into 5,333,333 shares of common stock in accordance with the terms of the January 2004 Notes. In addition, accrued interest in the amount $49 also converted into common stock at $0.75 per share, or 64,877 shares.

The Company 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 for the Offering. All warrants issued are exercisable until January 28, 2009 at an exercise price of $1.28 per share.

New Credit Agreement and Related Transactions

On April 28, 2004, MediaBay entered into a new credit agreement ("New Credit Agreement") by and among MediaBay and certain of its subsidiaries, the guarantors signatory thereto, Zohar CDO 2003-1, Limited ("Zohar") as lender, and Zohar, as agent, pursuant to which MediaBay and certain of its subsidiaries initially borrowed $9,500,000. The initial term of the New Credit Agreement is one year and it is extendable, at MediaBay's sole option, for two additional one-year terms upon issuance of additional notes of $600,000 for the first additional year and $300,000 for the second additional year, provided there is no event of default. The loan bears interest at the rate of LIBOR plus 10%. In the first year of the loan, a fee of $900 has been added to the principal balance, which will be reflected as debt discount and will be accreted to interest expense over the next twelve months. The New Credit Agreement contains certain positive and negative covenants, including, beginning with the quarter ending September 30, 2004, the maintenance of certain minimum levels of EBITDA, as defined in the New Credit Agreement.

MediaBay used a portion of the $8,600 of funds received under the New Credit Agreement to satisfy all of its outstanding obligations under (i) promissory notes that it issued in October 2003 in the aggregate principal amount of $1,065, and (ii) its prior Credit Agreement, which had an outstanding principal balance of approximately $1,386. MediaBay also repaid $1,600 principal amount of the $3,200 principal amount convertible note issued to ABC Investment, L.L.C. MediaBay issued a new $1,600 note (the "New ABC Note") for the remaining principal amount. The New ABC Note extends the maturity date from December 31, 2004 to July 29, 2007. In exchange for extending the maturity date, the conversion price of the New ABC Note was reduced to $0.50. The closing sale price of MediaBay's Common Stock on the closing date was $0.48.

The Principal Shareholder and an affiliate of the principal shareholder, which holds a $500 principal amount note and 25,000 shares of Series A Convertible Preferred Stock, consented to the New Credit Agreement and the other transactions described above and entered into a subordination agreement with Zohar. The New Credit Agreement requires the aggregate amount of principal and interest owed by MediaBay to the Principal Shareholder and the affiliate of the Principal Shareholder be reduced to $6,800 ("Permissible Debt") by June 1, 2004, and that the Permissible Debt be further reduced by up to an additional $1,800 if MediaBay does not raise at least $2,000 in additional equity in each of the

next two years.

On April 28, 2004, to reduce its debt to $6,800, the Principal Shareholder agreed, subject to, and automatically upon, the receipt of a fairness opinion from an independent investment banking firm, to

exchange the principal of its $500 Note, $1,000 Note, $150 Note and $350 Note, plus accrued and unpaid interest owed to the Principal Shareholder aggregating $1,833 and accrued and unpaid dividends owed to the Principal Shareholder aggregating $519 into an aggregate of 43,527 shares of Series C Preferred Stock convertible into (i) an aggregate of 5,580,384 shares of Common Stock at an effective conversion price of $0.78, and (ii) warrants to purchase an aggregate of 11,160,768 shares of Common Stock. The Warrants will be exercisable until April 28, 2014 at an exercise price of $0.53. The Series C Preferred stock has a liquidation preference of $100 per share. The transaction described above will result in a charge to earnings for inducement to exchange the debt for equity pursuant to FAS 48. The remaining promissory notes held by the Principal Shareholders and its affiliate are guaranteed by certain subsidiaries of the Company and secured by a lien on the assets of the Company and certain subsidiaries of the Company. If the amount of the Permissible Debt is required to be reduced due to MediaBay's failure to raise the requisite additional equity, such reduction will automatically occur by the exchange of Permissible Debt for additional shares of Series C Preferred Stock in an aggregate liquidation preference equal to the amount of debt exchanged and warrants to purchase a number of shares of common stock equal to two times the number of shares of preferred stock issuable upon conversion of the Series C Preferred Stock.

Settlement of Put Obligations

MediaBay has also entered into a settlement agreement, dated as of April 1, 2004, with Premier Electronic Laboratories, Inc. ("Premier"). Pursuant to the settlement, among other things, MediaBay will pay Premier $950 in exchange for Premier waiving its right to put its shares of Common Stock to MediaBay pursuant to a Put Agreement dated December 11, 1998. MediaBay's obligation under the Put Agreement was reduced by $150 in exchange for relinquishing certain leases for real property. MediaBay paid $14 on closing and will pay the remaining balance over six years in monthly payments starting at $7 in July 2004 and increasing to $19 from May 2007 through April 2010.

The following pro forma balance sheet reflects the effects of the following:

- Conversion of the January 2004 Convertible Debt, less the unamortized portion of offering fees and expenses which totaled $541, to common stock on April 12, 2004, the date of stockholder approval, as if the transactions had occurred on March 31, 2004.

- The New Credit Agreement ("New Credit Agreement") entered into on April 28, 2004 as if it was concluded on March 31, 2004.

- Payment of outstanding indebtedness under:

    (i) Promissory notes issued in October 2003 in the aggregate principal amount of $1,065, plus accrued interest,

    (ii) The prior Credit Agreement, which had an outstanding principal balance of approximately $1,386, and related fees of $55 and

(iii) $1,600 principal amount of the $3,200 principal amount convertible note issued to ABC Investment, L.L.C.,

- o The issuance of a new $1,600 note to ABC Investment LLC for the remaining balance and extension of the maturity date of the new note $1,600 from December 31, 2004 to July 29, 2007,

- o Extension of the related party debt to the earlier of June 28, 2007 or 90 days after repayment of the New Credit Facility and

- o The execution of the settlement agreement with Premier.

PRO FORMA BALANCE SHEET

	HISTORICAL MARCH 31, 2003	PRO FORMA ADJUSTMENTS	NOTES	PR M
ASSETS				
Current Assets:				
Cash and cash equivalents	$ 933	$ 4,052	1	$
		(21)	2	
		(55)	3	
Accounts receivable, net	1,995			
Inventory	4,181			
Prepaid expenses and other current assets	322			
Royalty advances	1,317			
Total current assets	8,748	3,976		
Fixed assets, net	241			
Deferred member acquisition costs	2,535			
Deferred income taxes	14,753			
Other intangibles	41			
Goodwill	9,658			
	$ 35,976	$ 3,976		$
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Accounts payable and accrued expenses	$ 7,958	($7)	2	$
Accounts payable, related parties	672			
Contingent put rights, current portion	350	(26)	2	
		(324)	4	
Short-term debt, net	8,239	(1,600)	1	
		(1,162)	1	
		88	1	
		(1,386)	1	
		12	2	
		(4,040)	5	
		998	5	
		463	5	
		(1,600)	6	
Related party short-term debt, net	11,033	(11,033)	7	
Total current liabilities	28,252	(19,617)		

Long-term debt, net		8,200	1	
		1,600	6	
		665	4	
Related party long-term debt, net		11,033	7	
Contingent put rights	750	(750)	4	
Commitments and Contingencies				
Preferred stock	2,828			
Common stock	94,567	4,040	5	
Contributed capital	12,762	259	4	
		3,991	8	
Accumulated deficit	(103,183)	(998)	1	
		(3,991)	8	
		(88)	1	
		(55)	3	
		(463)	5	
		150	4	
Total stockholders' equity	6,974	2,845		
	$ 35,976	3,976		$

NOTES:

1. To reflect the execution of the New Credit Agreement, including the incurrence of $9,500 of indebtedness and receipt of $8,600 from the New Credit Agreement, less payment of October 2003 Notes, the ING Credit Agreement, $1,600 of the ABC Note and approximately $400 of legal and other costs associated with the New Credit Agreement, recording of new debt obligation, net of debt discount, and write-off to expense of debt discounts related to the October 2003 Notes

2. To reflect the payment totaling $14 under the Premier settlement and $7 in accrued expenses owed to Premier made at the time of settlement.

3. To reflect the payment of fees upon payment of the ING Credit Agreement.

4. To reflect a reduction in the amounts due to Premier based on the settlement, an increase in paid-in-capital due to lower settlement amount and a gain on termination of lease agreements with Premier.

5. To reflect the conversion of January 2004 Notes to equity and the write-off of the debt discount, including the value of warrants issued and expenses incurred.

6. To reflect the extension of new ABC Note to July 29, 2007.

7. To reflect the extension of related party debt to the earlier of (i) 90 days following repayment of New Credit Agreement or June 28, 2007.

8. To record the beneficial conversion expense upon conversion of the January 2004 Notes.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING STATEMENTS

Certain statements in this Form 10-Q 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 the 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 express 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 anticipate and respond to changing customer preferences, license and produce desirable content, protect our databases and other intellectual property from unauthorized access, collect receivables; dependence on third-party providers, suppliers and distribution channels; competition; the costs and success of our marketing strategies; product returns; member attrition and other risks detailed in our Annual Report on Form 10-K for the year ended December 31, 2003. 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

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.

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.

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.

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.

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 2 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.

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.

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.

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.

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.

At March 31, 2004, 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 March 31, 2004, we had $9.7 million of goodwill, all of which related to our Radio Spirits operations. 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.

	THREE MONTHS ENDED MARCH 31, 2004	2003
Sales	100%	100%
Cost of sales	45.2	48.9
Gross profit	54.8	51.1
Advertising and promotion	23.9	26.6
Bad debt expense	7.0	9.4
General and administrative expense	27.4	23.1
Depreciation and amortization expense	.8	.9
Interest expense, net	15.0	4.9
Income tax expense (benefit)	--	--
Net (loss)	(19.4)	(13.8)
Dividends on preferred stock	1.1	.5
Net (loss) applicable to common shares	(20.5)%	(14.3)%

RESULTS OF OPERATIONS

Three months ended March 31, 2004 compared to three months ended March 31, 2003:

NET SALES

($000'S)	2003	2004	CHANGE FROM 2003 TO 2004	% CHANGE
AUDIO BOOK CLUB	$ 8,106	$ 3,727	$(4,379)	(54.0)%
RADIO SPIRITS				
Catalog	1,196	923	(273)	(22.8)%
Wholesale	730	569	(161)	(22.1)%
Continuity	648	413	(235)	(36.3)%
	2,574	1,905	(669)	(26.0)%
MEDIABAY.COM	17	52	35	205.9%
	$ 10,697	$ 5,684	$ 5,013	(46.9)%

Audio Book Club sales decreased principally due to a decrease in club membership as a result of a substantial reduction in our advertising expenditures for new members. For the three months ended March 31, 2004, the Audio Book Club spent $242,000 to attract new members, a reduction of $535,000, or 68.9%, from the amount spent to attract new members of $777,000 during the three months ended March 31, 2003. The lack of advertising spending occurred throughout the year ended December 31, 2003. 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. Audio Book Club attracted approximately 11,000 new members in the three months ended March31, 2004 as compared to approximately 61,000 new members in the three months ended March 31, 2003.

The decrease in Radio Spirits catalog sales of $273,000, or 22.8%, is principally attributable to reduced catalog mailings. We spent $135,000, or 49.2%, less in catalog mailings during the three months ended March 31, 2004 as compared to the spending during the three months ended March 31, 2003. Wholesale sales of old-time radio products decreased principally due to reduced sales at two major customers in the first

quarter of 2004. Sales of our World's Greatest Old-Time Radio continuity program decreased for the three months ended March 31, 2004, as compared to the three months ended March 31, 2003, principally due to the reduction in our advertising expenditures for new members. For the three months ended March 31, 2004, we spent $5,000 to attract new continuity customers, a reduction of $606,000, or 99.2% less, from the amount spent to attract new customers of $611,000 during the three months ended March 31, 2003.

COST OF SALES

$ (000's)	2003 $	2003 AS A % OF NET SALES	2004 $	2004 AS A % OF NET SALES	FROM 2003 TO 2000 CHANGE	% CH
AUDIO BOOK CLUB	$ 3,741	46.2%	$ 1,656	44.4%	$ (2,085)	(55
RADIO SPIRITS						
Catalog	607	50.8%	387	41.9%	(220)	(36
Wholesale	423	57.9%	348	61.2%	(75)	(17
Continuity	460	71.0%	179	43.3%	(281)	(61
Total Radio Spirits	1,490	57.9%	914	48.0%	(576)	(38
MEDIABAY.COM	3	--	--	--	(3)	
	$ 5,234	48.9%	$ 2,570	45.2%	$ (2,664)	(50

The principal reason for the decline in cost of sales at Audio Book Club was a reduction in sales of 54.4% as described above. Cost of sales as a percentage of sales at Audio Book Club for the three months ended March 31, 2004 was 44.4%, compared to 46.2% for 2002. The decrease in cost of sales as a percentage of sales is principally due to a reduced number of heavily discounted books sold to new members since a lower number of new members were added in the three months ended March 31, 2004 as compared to the three months ended March 31, 2003.

The principal reason for the decline in cost of sales at Radio Spirits was a reduction in sales of 24.7% as described above. As a percentage of sales, cost of sales at Radio Spirits decreased to 48.4% for the three months ended March 31, 2004 from 58.8% for the three months ended March 31, 2003. Cost of catalog sales decreased as a percentage of sales to 39.0% for the three months ended March 31, 2004 as compared to 49.9% for the three months ended March 31, 2003 principally due to fewer sales of discounted items. The cost of wholesale sales as percentage of sales increased to 67.1% for the three months ended March 31, 2004 as compared to 62.2% for the three months ended March 31, 2003 principally because to a higher portion of our 2004 sales were of products and to customers where we earn less gross profit and because we sold heavily discounted product in the first quarter of 2004 in an effort to reduce our inventory. The cost of World's Greatest Old-Time Radio continuity sales as a percentage of sales decreased to 43.3% from 71.0%. The continuity sales for the three months ended March 31, 2003 included heavily discounted introductory merchandise designed to attract new buyers, since we did very little new customer marketing in the three months ended March 31, 2004, very little of the product sales were of heavily discounted products.

ADVERTISING AND PROMOTION

	2003	2004	FROM 2003 TO 2004 CHANGE	% CHANGE
($000'S)				
AUDIO BOOK CLUB				
New Member	$ 777	$ 242	$ (535)	(68.9)%
Current Member	606	302	(304)	(50.2)%

Total Audio Book Club	1,383	544	(839)	(60.7)%

RADIO SPIRITS				
Catalog	316	170	(146)	(46.2)%
Wholesale	10	3	(7)	(70.0)%
Continuity	617	5	(612)	(99.2)%
Total Radio Spirits	943	178	(765)	(81.1)%
NEW PROJECTS	47	--	(47)	
TOTAL SPENDING	2,373	722	(1,651)	(69.6)%
AMOUNT CAPITALIZED	(1,101)	(218)		
AMOUNT AMORTIZED	1,575	855		
ADVERTISING AND PROMOTION EXPENSE	$ 2,847	$ 1,359		

Advertising and promotion expenses decreased $1.5 million to $1.4 million for the three months ended March 31, 2004 as compared to $2.9 million in the prior comparable period. Actual advertising expenditures for the three months ended March 31, 2004 decreased $1.7 million to $.7 million from $2.4 million during the three months ended March 31, 2003. The decrease was due to the lack of funds to market for new members and customers during the three months ended March 31, 2004 and the reduction in Audio Book Club membership due to normal attrition with no marketing to replace leaving members.

BAD DEBT EXPENSE

$ (000's)	2003		2004		FROM 2003 TO 2000	
	$	AS A % OF NET SALES	$	AS A % OF NET SALES	CHANGE	% CH
AUDIO BOOK CLUB	$959	11.8%	$ 356	9.5%	$ (603)	(62
RADIO SPIRITS						
Catalog	--	--	--	--	-	
Wholesale	4	0.6%	4	0.7%	-	
Continuity	42	6.5%	38	9.2%	(4)	(9
	46	1.8%	42	2.2%	(4)	(8
MEDIABAY.COM	--	--	--	--	--	
	$1,005	9.4%	$ 398	7.00%	$ (607)	(60

The principal reason for the decline in bad debt expense at Audio Book Club was a reduction in net sales of 54.0% as described above. Bad debt expense as a

percentage of net sales at Audio Book Club for the three months ended March 31, 2004 was 9.5%, compared to 11.8% for the three months ended March 31, 2003. The decrease in bad debt expense as a percentage of net sales is principally due to a reduced number of new members, who typically have higher bad debt expense, since a lower number of new members were added in the three months ended March 31, 2004 as compared to the three months ended March 31, 2003.

General and Administrative

$ (000's)	2003		2004		FROM 2002 TO 2003	
	$	AS A % OF NET SALES	$	AS A % OF NET SALES	CHANGE	% CHANGE
AUDIO BOOK CLUB	$ 767	9.4%	$ 669	17.9%	$ (98)	(12.8)%
RADIO SPIRITS	363	14.3%	205	10.9%	(158)	(43.5)%
MEDIABAY.COM	170		171		1	(.6)%
CORPORATE	1,165		509		(656)	(56.3)%
	$ 2,465	23.0%	$ 1,554	27.3%	$ (911)	(37.0)%

The decrease in general and administrative expenses for the three months ended March 31, 2004 as compared to the three months ended March 31, 2003 at Audio Book Club is principally due to a reduction in personnel, as a result of a restructuring, which occurred in September 2003 partially offset by increased consulting fees as some of our computer and Internet maintenance were outsourced. The decrease in general and administrative expenses for the three months ended March 31, 2004 as compared to the three months ended March 31, 2003 at Radio Spirits is principally due to a reduction in personnel, as a result of a restructuring, which occurred in September 2003, and a reduction in commission expense due to reduced wholesale sales. The reduction in corporate general and administrative expenses for the three months ended March 31, 2004 as compared to the three months ended March 31, 2003 is principally due to a reduction in personnel, as a result of a restructuring, a reduction in accounting fees due principally to a change in our auditors and reduction in legal expenses. During the three months ended March 31, 2003, we incurred legal fees in connection with litigation in which we were the plaintiff. The litigation was settled in June 2003 resulting in a settlement agreement, in which Audio Book Club 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 an 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 $3.5 million future contingent obligation of MediaBay and resulted in a corresponding increase in stockholders' equity.

DEPRECIATION AND AMORTIZATION

$ (000's)	2003	2004
DEPRECIATION		
AUDIO BOOK CLUB	$ 27	$ 25
RADIO SPIRITS	13	9

TOTAL DEPRECIATION	40	34
AMORTIZATION		
CORPORATE	59	13
TOTAL DEPRECIATION AND AMORTIZATION	$ 99	$ 47

The decrease in depreciation and amortization expenses for the three months ended March 31, 2004 as compared to the three months ended March 31, 2003 is principally attributable to reductions in the amortization of intangibles, which had been fully amortized or written off during the year ended December 31, 2003.

Interest Expense

	2003	2004	FROM 2003 TO 2004 CHANGE	% CHANGE
$ (000'S)				
TOTAL INTEREST PAID	147	180	33	22.4%
ACCRUED INTEREST PAID THIS PERIOD	(70)	(74)	4	5.7%
CURRENT INTEREST PAID	$ 77	$ 106	$ 29	(37.7)%
INTEREST ACCRUED	66	--	(66)	100%
INTEREST INCLUDED IN DEBT	261	323	62	23.8%
AMORTIZATION OF DEFERRED FINANCING COSTS AND ORIGINAL ISSUE DISCOUNT	119	425	306	257.1%
TOTAL INTEREST EXPENSE	$ 523	$ 854	$ 331	63.3%

The increase in interest expenses is principally due to the increase in amortization of debt discount and deferred financing fees. Amortization of debt discount and deferred financing fees for the three months ended March 31, 2004 was $425,000 as compared to $119,000 for the three months ended March 31, 2003.

The increase in amortization of deferred financing fees is principally attributable to amortization of deferred debt discount on the January 2004 Notes.

PREFERRED STOCK DIVIDENDS

	2003	2004
$ (000'S)		
DIVIDENDS ACCRUED ON SERIES A PREFERRED STOCK	56	56
DIVIDENDS ACCRUED ON SERIES B PREFERRED STOCK	--	8
TOTAL DIVIDENDS ACCRUED ON PREFERRED STOCK	$ 56	$ 64

The increase in preferred stock dividends for the three months ended March 31, 2004 as compared to the three months ended March 31, 2003 is due to the accrual of dividends for Series B Preferred Stock issued May 2003.

Our Principal Shareholder agreed, subject to, and automatically upon, the receipt of a fairness opinion from an independent investment banking firm, to

exchange the principal of certain notes, plus accrued and unpaid interest owed to the Principal Shareholder aggregating $1.8 million and accrued and unpaid dividends owed to the Principal Shareholder aggregating $519 into an aggregate of 43,527 shares of Series C Preferred Stock convertible into (i) an aggregate of 5,580,384 shares of Common Stock at an effective conversion price of $0.78, and (ii) warrants to purchase an aggregate of 11,160,768 shares of Common Stock. The Series C Preferred Stock will accrue dividends at the rate of 9% per annum. Assuming receipt of the fairness opinion and no other changes to our capital structure preferred dividends which would be deducted from net income to common stock holders would be approximately $635 in the twelve months ending April 30, 2005.

LOSS APPLICABLE TO COMMON STOCKHOLDERS

	2003	2004	FROM 2002 TO 2003 CHANGE	% CHANGE
$ (000'S)				
LOSS APPLICABLE TO COMMON STOCKHOLDERS	$ 1,537	$ 1,168	$ 369	24.0%

Principally because of lower expenses as described above, partially offset by lower sales due in large part to reduced spending on new member and customer advertising and lower wholesale sales at Radio Spirits, our net loss applicable to common shares for the three months ended March 31, 2004 decreased $369,000 to $1.2 million, or $.09 per diluted share as compared to a net loss applicable to common shares for the three months ended March 31, 2003 of $1.5 million, or $.11 per diluted share of common stock.

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LIQUIDITY AND CAPITAL RESOURCES

Historically, we have funded our cash requirements through sales of equity and debt securities and borrowings from financial institutions and our principal shareholders.

January 2004 Convertible Debt

On January 29, 2004, we issued $4.0 million aggregate principal amount of promissory notes (the "Notes") and warrants to purchase 2,352,946 shares of common stock (the "Investor Warrants") to institutional and accredited investors (the "Offering"). The notes were due on the earlier of (i) April 30, 2005, (ii) such date on or after July 1, 2004 at such time as all of our indebtedness under our existing credit facility is either repaid or refinanced or (iii) our consummation 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 the our voting stock. The notes bore interest at the rate of 6%, increasing to 9% on April 28, 2004 and 18% on July 27, 2004. On receipt of Shareholder approval, which was received on April 12, 2004, in accordance with the terms of 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. In addition accrued interest in the amount $49,000 also converted into common stock at $0.75 per share, or 64,877 shares.

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 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.

We used a portion of the proceeds of the offering to repay $1,250,000 of principal due on our prior credit Agreement with ING and Patriarch Capital (the "ING Credit Agreement").

New Credit Agreement and related Financing Transactions

On April 28, 2004, we entered into a new credit agreement ("New Credit Agreement") by and among MediaBay and certain of its subsidiaries, the guarantors signatory thereto, Zohar CDO 2003-1, Limited ("Zohar") as lender, and Zohar, as agent, pursuant to which we and certain of our subsidiaries initially borrowed $9.5 million. The initial term of the New Credit Agreement is one year and it is extendable, at our sole option, for two additional one-year terms upon issuance of additional notes of $600,000 for the first additional year and $300,000 for the second additional year, provided there is no event of default. The loan bears interest at the rate of LIBOR plus 10%. In the first year of the loan, a fee of $900,000 has been added to the principal balance, which will be reflected as debt discount and will be accreted to interest expense over the next twelve months. We used a portion of the $8.6 million of funds received under the New Credit Agreement to satisfy all of its outstanding obligations under (i) promissory notes that it issued in October 2003 in the aggregate principal amount of $1.0 million, and (ii) the ING Credit Agreement, which had an outstanding principal balance of approximately $1.4 million. We also repaid $1.6 million principal amount of a $3.2 million principal amount convertible note issued to ABC Investment, L.L.C. We issued a new $1.6 million note (the "New ABC Note") for the remaining principal amount. The New ABC Note extends the maturity date from December 31, 2004 to July 29, 2007. In exchange for extending the maturity date, the conversion price of the New ABC Note was reduced to $0.50. The closing sale price of MediaBay's Common Stock on the closing date was $0.48.

Norton Herrick ("Herrick"), a principal shareholder of the Company, Huntingdon Corporation ("Huntingdon"), a company wholly-owned by Herrick, and N. Herrick Irrevocable ABC Trust (the "Trust"), of which Herrick is the beneficiary and Howard Herrick, a principal shareholder of the Company, is the trustee, consented to the New Credit Agreement and the other transactions described above and entered into a subordination agreement with Zohar. The New Credit Agreement requires the aggregate amount of principal and interest owed by MediaBay to Herrick, Huntingdon and the Trust be reduced to $6,800,000 ("Permissible Debt") by June 1, 2004, and that the Permissible Debt be further reduced by up to an

additional $1,800,000 if MediaBay does not raise at least $2,000,000 in additional equity in each of the next two years.

On April 28, 2004, Herrick agreed, subject to, and automatically upon, the receipt of a fairness opinion from an independent investment banking firm, to exchange accrued and unpaid interest and dividends (including accrued and unpaid interest distributed by the Trust to Herrick) owed to Herrick aggregating $1,181,419 into (i) 11,814 shares of Series C Preferred Stock with a liquidation preference of $100 per share convertible into an aggregate of 1,514,615 shares of Common Stock at an effective conversion price of $0.78, and (ii) warrants to purchase 3,029,230 shares of Common Stock. The warrants will be exercisable until April 28, 2014 at an exercise price of $0.53.

On April 28, 2004, to reduce its debt to $6,800,000 Huntingdon agreed, subject to, and automatically upon, the receipt of a fairness opinion from an independent investment banking firm, to exchange the principal of the $500,000 principal amount note, $1,000,000 principal amount note, $150,000 principal amount note and $350,000 principal amount note held by Huntingdon, plus accrued and unpaid interest owed to Huntingdon aggregating $1,171,278 into (i) 31,713 shares of Series C Preferred Stock convertible into an aggregate of 4,065,768 shares of Common Stock at an effective conversion price of $0.78, and (ii) warrants to purchase an aggregate of 8,131,538 shares of Common Stock. The warrants will be exercisable until April 28, 2014 at an exercise price of $0.53. If the amount of the Permissible Debt is required to be reduced due to MediaBay's failure to raise the requisite additional equity, such reduction will automatically occur by the exchange of Permissible Debt held by Huntingdon for additional shares of Series C Preferred Stock in an aggregate liquidation preference equal to the amount of debt exchanged and warrants to purchase a number of shares of common stock equal to two times the number of shares of preferred stock issuable upon conversion of the Series C Preferred Stock.

Herrick, Huntingdon and the Trust have extended the remaining principal and interest on their debt to the earlier of (i) the repayment of the New Credit Agreement or (ii) June 28, 2007.

The remaining promissory notes held by Herrick, Huntingdon and the Trust are guaranteed by certain subsidiaries of the Company and secured by a lien on the assets of the Company and certain subsidiaries of the Company.

Settlement of Put Obligations

We also entered into a settlement agreement with Premier Electronic Laboratories, Inc. ("Premier") dated April 1, 2004. Pursuant to the settlement, among other things, we agreed to pay Premier $950,000 in exchange for Premier waiving its right to put its shares of Common Stock to MediaBay pursuant to a Put Agreement dated December 11, 1990. MediaBay's obligation under the Put Agreement was reduced by $150,000 in exchange for relinquishing certain leases for real property. MediaBay paid $14,000 on closing and agreed to pay the remaining balance over six years in monthly payments starting at $7,000 in July 2004 and increasing to $19,000 from May 2007 through April 2010.

Activity during the three months ended March 31, 2004.

For the three months ended March 31, 2004, cash increased by $250,000, as we had net cash used in operating activities of $1,614,000, used net cash of $47,000 in investing activities and had cash provided by investing activities of $1,911,000. Net cash used in operating activities principally consisted of the net loss of $1,168,000 increases in inventory, prepaid expenses and royalty advances of $118,000, $137,000 and $513,000, respectively, and a decrease in accounts payable and accrued expenses of $2,492,000 partially offset by depreciation and amortization expenses of $47,000, amortization of deferred financing costs and original issue discount of $424,000, non-current accrued interest and dividends payable of $389,000, non-cash stock compensation of $48,000 decreases in accounts receivable of $1,269,000 and a net reduction in deferred member acquisition costs of $637,000.

The decrease in accounts receivable was primarily attributable to the collection of retail receivables from the holiday selling season from our radio programs and a reduction in sales as described above. The decrease in deferred member acquisition cost is due the lack of funds to conduct new member and customer acquisition activities. The increase in royalty advances is principally due to a decline in sales and a reduction in

new member acquisition activities at Audio Book Club, which results in lower royalty expense and less utilization of the advances, as well as the timing and payment of advances. We believe that new member acquisition activities funded by the proceeds of the New Credit Agreement will generate sales activity sufficient to earn royalties sufficient to offset royalty advances. If, however, we are unable to generate sufficient sales activity, unearned advance royalty payments will be expensed. During the three months ended March 31, 2004, we reduced accounts payable and accrued expenses by $2,492,000, the majority of which were over 90 days past due.

Net cash used in investing activities consists of acquisition of fixed assets of $47, principally computer equipment.

During the three months ended March 31, 2004, we received the proceeds of the January 2004 Convertible Debt described above and incurred $525,000 in financing costs relating to the January 2004 Convertible debt and repaid our senior secured debt a total of $1,538,000, including $1,250,000 repaid with proceeds of the January 2004 Convertible Debt.

RECENT ACCOUNTING PRONOUNCEMENTS

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 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 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 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.

CERTAIN TRANSACTIONS

In addition, to the financing transactions described above under "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources", in connection with the Offering described above, 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. The January 2004 Notes were converted into common stock on April 12, 2004.

In connection with Norton Herrick and Huntingdon consenting to the New Credit Agreement, we agreed to pay to Herrick accounts payable and accrued expenses due to him as of March 31, 2004 in the amount of approximately $672,000. Such amounts are to be paid to him at the rate of $40,500 per month. XNH Consulting Services, Inc. ("XNH"), a company wholly-owned by Norton Herrick, and the Company also modified a termination agreement, in which we had agreed among other things to pay XNH a fee of $7,500 per month for 16 months commencing on January 1, 2004 and Herrick agreed to provide consulting services at his sole discretion. The modification eliminated our obligation to make the monthly payments and our ability to request consulting services from XNH. All other terms of the termination agreement were unchanged.

QUARTERLY FLUCTUATIONS

Our operating results vary from period to period as a result of purchasing patterns of members, the timing, costs, magnitude and success of direct mail campaigns and Internet initiatives and other new member recruitment advertising, member attrition, the timing and popularity of new audiobook releases and product returns.

The timing of new member enrollment varies depending on the timing, magnitude and success of new member advertising, particularly Internet advertising and direct mail campaigns. We believe that a significant portion of our sales of old-time radio and classic video programs are gift purchases by consumers. Therefore, we tend to experience increased sales of these products in the fourth quarter in anticipation of the holiday season and the second quarter in anticipation of Fathers' Day.

ITEM 3: QUANTITATIVE AND QUALITATIVE DISCLOSURES OF MARKET RISK

We are exposed to market risk for the impact of interest rate changes. Historically, we have not entered into derivative transactions for hedging, trading or speculative purposes.

The Company's exposure to market risk for changes in interest rates relates to its variable rate debt. The Company has total debt outstanding as of May 14, 2004 of $22.9 million, of which $2.3 million is at fixed rates, $9.5 million bears interest at LIBOR plus 10% and $11.1 million bears interest at prime plus 2.5%. If the prime rate or LIBOR were to increase the Company's interest expense would increase, however a hypothetical 10% change in interest rates would not have had a material impact on its fair values, cash flows, or earnings for the three months ended March 31, 2003. All of the Company's other debt is at fixed rates of interest.

ITEM 4. 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 March 31, 2004 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 II - OTHER INFORMATION

ITEM 2: CHANGES IN SECURITIES AND USE OF PROCEEDS (DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATE)

On January 29, 2004, we issued $4.0 million 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 were 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 bore interest at the rate of 6%, increasing to 9% on April 28, 2004 and 18% on July 27, 2004. On receipt of Shareholder approval, which was received on April 12, 2004, 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. In addition accrued interest in the amount of $49,000 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 foregoing securities were issued in private transactions pursuant to an exemption from the registration requirement offered by Rule 506 promulgated under the Securities Act of 1933.

In addition to the non-plan warrants described above, in the first quarter of 2004, we issued plan options to purchase 1,650,000 shares of its common stock to officers. The options have exercise prices ranging from $.99 to $1.86 vest at various times and have a five-year exercise period. The Company also cancelled five-year plan options to purchase a total of 1,500,000 shares of common stock and options to purchase 152,500 shares of our common stock expired. We also cancelled non-plan warrants to purchase 25,000 shares of our common stock. Non-plan warrants to purchase 8,000 shares of our common stock at $.10 were exercised during the three months ended March 31, 2004.

The foregoing securities were issued in private transactions pursuant to an exemption from the registration requirement offered by Rule 506 promulgated under the Securities Act of 1933.

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ITEM 6: EXHIBITS AND REPORTS ON FORM 8-K.

(a) Exhibits

10.1 Credit Agreement, dated as of April 28, 2004, among MediaBay, Inc., Radio Spirits, Inc., Audio Book Club, Inc., the guarantors signatory thereto, Zohar CDO 2003-1, Limited, as lender, and Zohar, as agent, including exhibits and schedules thereto

10.2 Agreement dated as of April 1, 2004 by and among MediaBay, Inc., Premier Electronic Laboratories, Inc. Edison Realty and Marketing, Inc. and Video Yesteryear, Inc.

10.3 9% Senior Subordinated Promissory Note due July 29, 2007 in the principal sum of $1.6 million, pursuant to which MediaBay, Inc. is the Maker and ABC Investment, L.L.C. is the Payee.

10.4 Agreement, dated as of April 28, 2004, by and between MediaBay, Inc. and ABC Investment, L.L.C.

10.5 Subordination and Intercreditor Agreement dated as of April 28, 2004, among Huntingdon Corporation, Norton Herrick, N. Herrick Irrevocable ABC Trust, MediaBay, Inc., Radio Spirits, Inc., Audio Book Club, Inc., and Zohar CDO 2003-1, Limited, as administrative agent.

10.6 Subordination Agreement dated as of April 28, 2004, among Premier Electronic Laboratories, Inc., MediaBay, Inc., and Zohar CDO 2003-1, Limited, as administrative agent.

10.7 Subordination Agreement dated as of April 28, 2004, among ABC Investment, L.L.C., MediaBay, Inc., Radio Spirits, Inc., Audio Book Club, Inc., and Zohar CDO 2003-1, Limited, as administrative agent.

10.8 Security Agreement dated as of April 28, 2004, among MediaBay, Inc., the other persons listed on the signature pages thereto, and Zohar CDO 2003-1, Limited, as agent.

10.9 Agreement dated as of April 28, 2004, between MediaBay, Inc. and Huntingdon Corporation.

10.10 Agreement dated as of April 28, 2004, between MediaBay, Inc. and Norton

Herrick

10.11 Agreement dated as of April 28, 2004, between MediaBay, Inc. and N. Herrick Irrevocable Trust

10.12 Amended and Restated Security Agreement dated as of April 28, 2004, by and among MediaBay, Inc., the subsidiaries of MediaBay, Inc. set forth in Schedule 2 annexed thereto, and Norton Herrick.

10.13 Security Agreement dated as of April 28, 2004, by and among MediaBay, Inc., the subsidiaries of MediaBay, Inc. set forth in Schedule 2 annexed thereto, and N. Herrick Irrevocable ABC Trust.

10.14 Amended and Restated Security Agreement dated as of April 28, 2004, by and among MediaBay, Inc., the subsidiaries of MediaBay, Inc. set forth in Schedule 2 annexed thereto, and Huntingdon Corporation.

10.15 Guaranty dated as of April 28, 2004, made by ABC Investment Corp., Radio Spirits, Inc., Video Yesteryear, Inc., Audio Book Club, Inc., and the Additional Guarantors (as defined therein) in favor of the N. Herrick Irrevocable ABC Trust.

10.16 Amended and Restated Guaranty dated as of April 28, 2004, made by ABC Investment Corp., Radio Spirits, Inc., Video Yesteryear, Inc., Audio Book Club, Inc., and the Additional Guarantors (as defined therein) in favor of Norton Herrick.

10.17 Amended and Restated Guaranty dated as of April 28, 2004, made by ABC Investment Corp., Radio Spirits, Inc., Video Yesteryear, Inc., Audio Book Club, Inc., and the Additional Guarantors (as defined therein) in favor of Huntingdon Corporation.

10.18 Second Amended and Restated Intercreditor Agreement dated as of April 28, 2004, by and among Huntingdon Corporation, Norton Herrick and N. Herrick Irrevocable ABC Trust.

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 20

(b) Reports on Form 8-K
Report on Form 8-K filed with the Securities and Exchange Commission on January 30, 2004 announcing the Offering.

SIGNATURES

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

MEDIABAY, INC.

Dated: May 17, 2004

By: /s/ Jeffrey Dittus

Jeffrey Dittus
Chief Executive Officer

Dated May 17, 2004

By: /s/ John F. Levy

John F. Levy
Chief Financial Officer
(principal accounting and financial officer)