MEDIABAY INC
Form 10-Q
November 06, 2003

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Form 10-Q

|X| QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 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 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|

As of November 6, 2003, there were 14,152,786 shares of the Registrant's Common Stock outstanding.

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MEDIABAY, INC.

Quarter ended September 30, 2003
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PART I: FINANCIAL INFORMATION

Item 1: Financial Statements

MEDIABAY, INC.
Condensed Consolidated Balance Sheets
(Dollars in thousands)
(Unaudited)

	Septe 2 -----
Assets	
Current assets:	
Cash and cash equivalents	$
Accounts receivable, net of allowances for sales returns and doubtful accounts of $4,900 and $5,325 at September 30, 2003 and December 31, 2002, respectively	
Inventory	
Prepaid expenses and other current assets	
Royalty advances	

Total current assets	1
Fixed assets, net of accumulated depreciation of $777 and $665 at September 30, 2003 and December 31, 2002, respectively	
Deferred member acquisition costs	
Deferred income taxes	1

Other intangibles, net	
Goodwill	

	$ 4
	===

Liabilities and Stockholders' Equity

Current liabilities:	
Accounts payable and accrued expenses	$ 1
Due to bridge loan investors	
Current portion - long-term debt	

Total current liabilities	1

Long-term debt and related accrued interest, net of original issue discount of $248 and $567 at September 30, 2003 and December 31, 2002, respectively	1
Common stock subject to contingent put rights	
Preferred stock, no par value, authorized 5,000,000 shares; 25,000 shares of Series A issued and outstanding at September 30, 2003 and December 31, 2002 and 3,350 shares and no shares of Series B at September 30, 2003 and December 31, 2002, respectively	
Common stock; no par value, authorized 150,000,000 shares; issued and outstanding 14,137,401 at September 30, 2003 and 14,341,376 at December 31, 2002, respectively	9
Contributed capital	1
Accumulated deficit	(9

Total stockholders' equity	1

	$ 4
	===

See accompanying notes to condensed consolidated financial statements.

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MEDIABAY, INC.
Condensed Consolidated Statements of Operations
(Dollars in thousands, except per share data)
(Unaudited)

	Three months ended September 30,	
	2003	2002
Sales, net of returns, discounts and allowances of $4,753 and $4,598, and $14,174 and $10,889 for the three and nine months ended September 30, 2003 and 2002, respectively	$ 9,572	$ 11,267
Cost of sales	4,252	5,241
Gross profit	5,320	6,026
Advertising and promotion	2,069	2,633
Bad debt	931	641
General and administrative	1,613	1,868

Depreciation and amortization	65	191
Operating income	642	703
Interest expense	295	833
Income (loss) before income taxes	347	(130)
Income tax expense	--	--
Net income (loss)	347	(130)
Dividends on preferred stock	62	57
Net income (loss) applicable to common shares	$ 285	$ (187)
Basic and diluted income (loss) per share:		
Basic income (loss) per common share	$ .02	$ (.01)
Diluted income (loss) per common share	$ .02	$ (.01)

See accompanying notes to condensed consolidated financial statements.

MEDIABAY, INC.
Condensed Consolidated Statements of Cash Flows
(Dollars in thousands)
(Unaudited)

	Nine mon Septem 2003
Cash flows from operating activities:	
Net loss applicable to common shares	(1,480)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:	
Depreciation and amortization	263
Amortization of deferred member acquisition costs	4,525
Non-current accrued interest and dividends	818
Amortization of deferred financing costs and debt discount	379
Changes in asset and liability accounts, net of acquisitions and asset write-downs and strategic charges:	
Decrease (increase) in accounts receivable, net	1,389
Decrease (increase) in inventory	468
Decrease (increase) in prepaid expenses	78
(Increase) in royalty advances	(26)
Increase in deferred member acquisition costs	(2,383)
(Decrease) increase in accounts payable and accrued expenses	(2,381)
Net cash provided by (used in) operating activities	1,650
Cash flows from investing activities:	
Acquisition of fixed assets	(15)
Assets acquired, net of cash	(148)
Acquisition of intangible assets	(102)

Net cash used in investing activities	(265)
Cash flows from financing activities:	
Proceeds from exercise of stock options and warrants	--
Net proceeds from issuance of long-term debt	--
Payment of long-term debt	(1,390)
Increase in deferred financing costs	(40)
Proceeds from issuance of Preferred Stock	348
Payments made in connection with litigation settlement recorded in contributed capital, net of cash received	(690)
Cash received from bridge loan investors	965
Net cash (used in) provided by financing activities	(807)
Net increase (decrease) in cash and cash equivalents	578
Cash and cash equivalents at beginning of period	397
Cash and cash equivalents at end of period	$ 975

See accompanying notes to condensed consolidated financial statements.

MEDIABAY, INC.
Notes to Condensed Consolidated Financial Statements
(Dollars in thousands, except per share data)
(Unaudited)

(1) Organization

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

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 and nine months ended June 30, 2003 and 2002 would have been as follows:

	Three Months Ended September 30, 2003	Three Months Ended September 30, 2002	En 2
Net income (loss) income applicable to common shares, as reported	$ 285	$ (187)	$ (
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	(601)	(132)	
Pro forma net (loss) income applicable to common shares	$ (316)	$ (319)	$ (
Net (loss) income per share			
Basic and diluted - as reported	$ .02	$ (.01)	$
Basic and diluted - pro forma	$ (.02)	$ (.02)	$

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 Nine Months 2002	290,000	$2.94	165%	4.49%	$1.53
First Nine Months 2003	2,213,856	$0.97	165%	4.85%	$ .29

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 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. 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 $28 and $129 and $149 and $950 for the three and nine months ended September 30, 2003 and 2002, respectively. The Company estimates intangible amortization expenses of the following:

Three months ended December 31, 2003	$ 41
Year ended December 31, 2004	13
Year ended December 31, 2005	8
Year ended December 31, 2006	8
Year ended December 31, 2007	8

Year ended December 31, 2008	1
Total	$ 79

The following table presents details of Other Intangibles at September 30, 2003 and December 31, 2002:

	September 30, 2003			December 31, 2002	
	Cost	Accumulated Amortization	Net	Cost	Accumulated Amortization
Mailing Agreements	$ 592	$ 592	$ --	$ 592	$ 524
Customer Lists	4,380	4380	--	4,380	4,380
Non-Compete Agreements	313	234	79	200	151
Other	5	--	5	5	--
Total Other Intangibles	$ 5,290	$ 5,204	$ 84	$ 5,177	$ 5,055

Goodwill of $9,658 and $9,871 as of September 30, 2003 and December 31, 2002 respectively is attributable to the Company's Radio Spirits business. The change of $213 is related to the finalization of the acquisition of Great American Audio, which occurred in March 2002.

(4) Long-term Debt

Bank Debt

As of November 1, 2003, the Company had $3,075 of indebtedness outstanding under the Amended and Restated Credit Agreement dated as of October 3, 2002, as amended, by and among the Company and Radio Spirits, Inc. and Audio Book Club, Inc., wholly-owned subsidiaries of the Company, 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 April 30, 2004; provided however, that the Company is required to make monthly payments of principal of $75 in November through March 2004. The Company is 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%. The Company granted the lenders under the Credit Agreement a security interest in substantially all of the Company's assets and the assets of its subsidiaries and pledged the stock of its subsidiaries.

The Company is required to maintain Minimum EBITDA, as defined below, of the following:

1) $5,000,000 for the period beginning on January 1, 2001 and ending prior to September 30, 2003;

2) $6,000,000 for the period beginning on January 1, 2001 and ending prior to December 31, 2003.

3) $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 the Company's advertising expense and new member acquisition costs as expensed as incurred.

The Company was in compliance with this covenant at September 30, 2003.

In addition to limiting the Company's ability to incur additional indebtedness, the Credit Agreement prohibits the Company from, among other things:

1) merging into or consolidating with another entity;

2) selling all or substantially all of its assets;

3) declaring or paying cash dividends; and

4) materially changing the nature of its business.

The Company anticipates making the principal payments from cash flow generated from operations.

The balance of the Company's bank debt, after making the above payments, of $2,700 is due April 30, 2004. We are currently seeking to refinance or extend this debt. Historically we have been able to extend the maturity of this debt.

(5) Stockholders' Equity and Stock Options and Warrants

Stock Options and Warrants

From January 1, 2003 to September 30, 2003, the Company issued options to purchase 210,000 shares of its common stock to certain directors, employees and consultants to the Company under its 2000 Stock Option plan and 2,123,856 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 155,000 shares of its common stock and options to purchase 323,000 shares expired during the nine months ended September 30, 2003. 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.

On July 31, 2003, a director 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 due to expire based on their terms. The options were exercised on a "cashless" basis and the closing stock price on July 31, 2001 was $.78, accordingly, the Company issued to the director a certificate for 107,692 shares of MediaBay common stock. The director has not sold any of the stock received in the transaction.

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.

(6) 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	1,040
Settlement of litigation recorded in Contributed Capital	$ 3,007

(7) Net Income (Loss) Per Share of Common Stock

Basic income (loss) earnings per share was computed using the weighted average number of common shares outstanding for the three and nine months ended September 30, 2003 of 14,128,179 and 14,269,529, respectively and for the three and nine months ended September 30, 2002 of 14,218,640 and 14,025,157, respectively.

Differences in the weighted average number of common shares outstanding for purposes of computing diluted earnings per share for the three months ended September 30, 2003 were due to the inclusion of 591,000 common equivalent shares, as calculated under the treasury stock method and 17,087,000 common equivalent shares relating to convertible subordinated debt calculated under the "if-converted method". Interest expense and dividends on the convertible subordinated debt and convertible preferred stock added back to net income was $359 for the three months ended September 30, 2003. .

For the nine months ended September 30, 2003 common equivalent shares which were not included in the computation of diluted loss per share because they would have been anti-dilutive were 694,000 common equivalent shares, as calculated under the treasury stock method and 16,884,000 common equivalent shares relating to convertible subordinated debt and convertible preferred stock calculated under the "if-converted method". Interest expense and dividends on the convertible subordinated debt and convertible preferred stock added back to net income applicable to common stockholders would have been $1,034 for the nine months ended September 30, 2003.

Common equivalent shares totaling 17,659,927, including 15,708,000 shares associated with the conversion of convertible debt, and the related reduction in interest expense of $271 for the three months ended September 30, 2002, were not included in the computation of diluted loss per share at September 30, 2002 because they would have been anti-dilutive. Common equivalent shares totaling 17,822,755, including 15,654,000 shares associated with the conversion of convertible debt, and the related reduction in interest expense of $834 for the nine months ended September 30, 2002, were not included in the computation of diluted loss per share at September 30, 2002 because they would have been anti-dilutive.

(8) Supplemental Cash Flow Information

Cash paid for interest expense was $412 and $564 for the nine months ended September 30, 2003 and 2002, respectively.

During the nine months ended September 30, 2003, the Company issued 13,333 shares of the Company's common stock to consultants under consulting agreements. The shares have been valued at $10 and are being amortized to expense over the period of benefit.

(9) Segment Reporting

For 2003 and 2002, 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, 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 nine months ended September 30, 2003 and 2002 from its newest subsidiary RadioClassics, which is aggregated with RSI for segment reporting purposes. Inter-segment sales are recorded at prevailing sales prices.

Three Months Ended September 30, 2003

	Corporate	ABC	RSI	M
Sales, net of returns, discounts and allowances	$ --	$ 6,493	$ 3,071	$
Profit (loss) before depreciation and amortization, interest and dividends	(532)	541	813	
Depreciation and amortization	30	25	10	
Interest expense	292	--	3	
Dividends on preferred stock	62	--	--	
Net (loss) income applicable to common shares	(916)	516	800	
Total assets	--	28,397	16,441	
Acquisition of fixed assets	--	--	--	

Three Months Ended September 30, 2002

	Corporate	ABC	RSI	M
Sales, net of returns, discounts and allowances	$ --	$ 8,792	$ 2,465	$
Profit (loss) before asset write-downs and strategic charges, depreciation and amortization, interest and dividends	(626)	1,516	121	
Depreciation and amortization	129	31	31	
Interest expense	817	--	16	
Dividends on preferred stock	57	--	--	
Net (loss) income applicable to common shares	(1,629)	1,485	74	
Total assets	--	30,492	20,606	
Acquisition of fixed assets	--	14	--	

Nine Months Ended September 30, 2003

	Corporate	ABC	RSI	M
Sales, net of returns, discounts and allowances	$ --	$ 21,873	$ 7,781	$

Profit (loss) before depreciation and amortization, interest and dividends	(1,802)	1,351	1,172
Depreciation and amortization	151	79	33
Interest expense	1,337	--	10
Dividends on preferred stock	183	--	--
Net (loss) income applicable to common shares	(3,473)	1,272	1,129
Total assets	--	28,397	16,441
Acquisition of fixed assets	--	13	2

Nine Months Ended September 30, 2002

	Corporate	ABC	RSI	M
Sales, net of returns, discounts and allowances	$ --	$ 25,920	$ 6,772	$
Profit (loss) before asset write-downs and strategic charges, depreciation and amortization, interest and dividends	(1,921)	4,417	900	
Depreciation and amortization	950	95	91	
Interest expense	2,310	--	61	
Dividends on preferred stock	159	--	--	
Net income (loss) applicable to common shares	(5,340)	4,322	748	
Total assets	--	30,492	20,606	
Acquisition of fixed assets	--	88	18	

(10) Recent Accounting Pronouncements

In May 2003, the FASB issued SFAS 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." This Statement establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances). This Statement is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of FASB 150 had no impact on the Company's operating results or financial condition.

In April 2003, the Financial Accounting Standards Board ("FASB") issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities"("SFAS 149"). SFAS No. 149 amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under Statement 133. With certain exceptions, SFAS No. 149 is effective for contracts entered into or modified after June 30, 2003, and for hedging relationships designated after June 30, 2003. Management does not believe adoption of this standard will have a material impact on the Company's financial position or results of operations.

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities." This interpretation defines when a business enterprise must consolidate a variable interest entity. This interpretation applies immediately to variable interest entities created after January 31, 2003. It applies in the first fiscal year or interim period beginning after June 15, 2003, to entities in which an enterprise holds a variable interest that it acquired before February 1, 2003. The adoption of this statement is not expected to have a material effect on the Company's financial position or results of operations.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation -- Transition and Disclosure" ("SFAS 148") which amends SFAS No. 123. This statement provides alternative methods of transition for a voluntary change to the fair value-based method of accounting for stock-based employee compensation and amends the disclosure requirements of SFAS No. 123. The transition guidance and disclosure requirements are effective for fiscal years ending after December 15, 2002. The Company has included the required interim disclosure in Note 2 to these Financial Statements. The adoption of this statement did not have a material effect on the Company's financial position or results of operations.

In November 2002, the FASB issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others". This interpretation requires a guarantor to recognize, at the inception of the guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. It also enhances guarantor's disclosure requirements to be made in its interim and annual financial statements about its obligations under certain guarantees it has issued. The initial recognition and initial measurement provisions of this interpretation are applicable on a prospective basis to guarantees issued or modified after December 31, 2002. The disclosure requirements are effective for financial statements of interim or annual periods ending after December 15, 2002. In the normal course of business, the Company does not issue guarantees to third parties; accordingly, this interpretation will not have an effect on the Company's financial position or results of operations.

In April 2002, SFAS No. 145, "Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections", was approved by the FASB. This statement is effective January 1, 2003. Among other things, this statement requires that gains or losses on the extinguishment of debt will generally be required to be reported as a component of income from continuing operations and will no longer be classified as an extraordinary item. Therefore, beginning in 2003, the Company's prior financial

statements will need to be reclassified to include those gains and losses previously recorded as an extraordinary item as a component of income from continuing operations.

In July 2002, the FASB issued SFAS No. 146, "Accounting for Exit or Disposal Activities" (SFAS 146"). SFAS 146 requires the recognition of a liability for costs associated with an exit plan or disposal activity when incurred and nullifies Emerging Issues Task Force (EITF) Issue 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)", which allowed recognition at the date of an entity's commitment to an exit plan. The provisions of this statement are effective for exit or disposal activities that are initiated by the Company after December 31, 2002.

In June 2001, the FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations," effective for fiscal years beginning after June 15, 2002. This statement addresses the diverse accounting practices for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. The adoption of this statement did not have a material effect on the Company's financial position or results of operations.

(11) Certain Transactions

During the three months ended September 30, 2003, Norton Herrick, a director, 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 included in the $1,065 financing described below.

(12) Subsequent Events

On October 1, 2003, the Company completed a $1,065 financing consisting of the notes due September 23, 2004. The notes bear interest at 18%, provided 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 has 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. Purchasers of notes included Carl Wolf, Chairman of MediaBay and a wholly owned affiliate of Norton Herrick, a Board member.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (Dollars in thousands, except per share data)

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 Company's 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 the Company believes 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 the Company's 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, without limitation, the Company's history of losses; its ability to meet stock repurchase obligations, anticipate and respond to changing customer preferences, license and produce desirable content, protect its databases and other intellectual property from unauthorized access; pay trade creditors and collect receivables; dependence on third-party providers, suppliers and distribution channels; competition; the costs and success of its 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. The Company undertakes no obligation to update any forward-looking statements.

Introduction

The Company is a marketer of spoken audio products, including audiobooks and old-time radio shows, through direct response, retail and Internet channels. The Company's content and products are sold in multiple formats, including physical (cassette and compact disc) and secure digital download formats.

The Company reports financial results on the basis of four business segments; Corporate, Audio Book Club ("ABC"), Radio Spirits ("Radio Spirits" or "RSI") and MediaBay.com. A fifth division, Radio Classics, 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.

Results of Operations

Three Months Ended September 30, 2003 Compared to Three Months Ended September 30, 2002

Sales, net of returns, discounts and allowances for the three months ended September 30, 2003 were $9,572 a decrease of $1,695, as compared to $11,267 for the three months ended September 30, 2002. The decrease in sales is principally due to decreased sales at our Audio Book Club of $2,343 in large part due to a decrease in membership and new member sales. The Company has implemented a series of initiatives to increase cash flow including significant reductions in marketing and advertising expenditures to attract new members to its Audio Book Club. The decline in revenue at Audio Book Club was partially offset by an increase of $572 of sales in the three months ended September 30, 2003, of The World's Greatest Old-Time Radio continuity program as compared to the three months ended September 30, 2002. The World's Greatest Old-Time Radio continuity program is a program introduced in the third quarter of 2002, which is similar to Audio Book Club and offers old-time radio products.

Cost of sales for the three months ended September 30, 2003 decreased $949 to $4,252 from $5,241 in the prior comparable period. Cost of sales as a percentage of net sales decreased to 44.4% for then three months ended September 30, 2003 from 46.5% for the three-month period ended September 30, 2002. Principally due to lower sales, as described above, gross profit decreased $706, to $5,320 for the three

months ended September 30, 2003 as compared to $6,026 for the three months ended September 30, 2002. The decrease in cost of sales is principally due to lower sales and fewer new members enrolled at Audio Book Club and fewer new customers at The World's Greatest Old-Time Radio continuity program in the third quarter of 2003 as compared to the third quarter of 2002, which resulted in fewer introductory packages with heavily discounted products, which adversely affect cost of sales. Gross profit as a percentage of net sales increased to 55.6% for the three months ended September 30, 2003 as compared to 53.5% for the three months ended September 30, 2002.

Advertising and promotion expenses decreased $564 to $2,069 for the three months ended September 30, 2003 as compared to $2,633 in the prior comparable period. The decrease is principally due to the acquisition of fewer new Audio Book Club members and The World's Greatest Old-Time Radio continuity program customers during the three months ended September 30, 2003 compared to the three months ended September 30, 2002, which resulted in a fewer new member and customer introductory packages, which include premiums that are expensed as new members and customers enroll and lower expenses for catalogs mailed to Audio Book Club members as a result of the Audio Book Club reduced active membership and the timing of catalog mailings

Increases in bad debt expenses of $290 to $931, for the three months ended September 30, 2003, as compared to $641 for the three months ended September 30, 2002, are principally due to an increase in new members in 2002 from the Internet and our Passages Christian audiobook club whose non-pay rates have been significantly higher than our traditional Audio Book Club members.

General and administrative expenses for the three months ended September 30, 2003 decreased $255 to $1,613 from $1,868 for the three months ended September 30, 2002 principally due to decreases in payroll and related expenses due to a restructuring of the Company, which when fully phased in by January 1, 2004, should result in annual savings in general and administrative costs of $1,400 and lower public relations and investor relation expenses, partially offset by an increase in insurance costs.

Depreciation and amortization expenses for the three months ended September 30, 2003 were $65, a decrease of $126, as compared to $191 for the prior comparable period. The decrease is principally attributable to reductions in the amortization of intangibles, which had been fully amortized or written off during the year ended December 31, 2002.

Interest expense for the three months ended September 30, 2003 decreased $538 to $295 as compared to $833 for the three months ended September 30, 2002. The decrease is principally due to the pay down of a portion of our senior credit facility, a decrease in interest rates on our variable rate debt as interest rates have declined, inclusion in the three months ended September 30, 2002 of $444 for amortization of debt discount and deferred financing fees as compared to $106 for the three months ended September 30, 2003 and forgiveness in September 2003 of $100 of interest recorded in 2002 to a vendor and reversal of interest accrued in the first six months of 2003 to the same vendor.. Preferred dividends for the three months ended September 30, 2003 were $62 as compared to $57 for the three months ended September 30, 2002.

Principally due lower sales partially offset by the lower costs enumerated above and decreased amortization of goodwill and the Company reported a net income applicable to common shares of $285, or $0.02 per diluted share of common stock for the three months ended September 30, 2003, as compared to a net loss applicable to common shares of $187, or $0.01 per diluted share of common stock for the three months ended September 30, 2002.

Nine Months Ended September 30, 2003 Compared to Nine Months Ended September 30, 2002

Sales, net of returns, discounts and allowances for the nine months ended September 30, 2002 were $29,677, a decrease of $3,047, as compared to $32,724 for the nine months ended September 30, 2002. The decrease in sales is principally due to decreased sales at our Audio Book Club of $4,274 due to significant reductions in marketing and advertising expenditures to attract new members and higher return rates from members acquired in 2002 and a decrease of $1,396 in wholesale sales of our old-time radio products

partially offset by an increase of $2,158 of sales in the nine months ended September 30, 2003, of The World's Greatest Old-Time Radio continuity program as compared to the same period in 2002 and increases in our audiobook mystery continuity program of $226 and in revenue from syndication of our old-time radio shows to radio stations of $150.

Cost of sales for the nine months ended September 30, 2003 decreased

$1,113 to $13,651 from $14,724 in the prior comparable period. Cost of sales as a percentage of net sales increased to 45.9% for the nine months ended September 30, 2003 compared to 45.0% for the nine months ended September 30, 2002. The increase in cost of goods sold as a percentage of net sales is principally due to an increase at the Radio Spirits operations as a result of discounting in the direct mail business relating to a new customer acquisition program marketed through a radio advertising campaign, increased returns in the wholesale business resulting in higher fulfillment costs as a percentage of revenue and increased provisions for obsolete inventory partially offset by lower cost of sales as a percentage of sales at The World's Greatest Old-Time Radio continuity as the program was rolled out. Principally due to lower sales, gross profit decreased $1,933 to $16,066 for the nine months ended September 30, 2003 as compared to $18,000 for the nine months ended September 30, 2002.

Advertising and promotion expenses increased $119 to $7,528 for the nine months ended September 30, 2003 as compared to $7,409 in the prior comparable period. The increase is principally due to more advertising expenditures during the year ended December 31, 2002 compared to the year ended December 31, 2001, which resulted in increased amortization of deferred member acquisition costs in the nine months ended September 30, 2003 as compared to the nine months ended September 30, 2002, and costs incurred in the testing of potential new products, partially offset by the acquisition of fewer new Audio Book Club members and The World's Greatest Old-Time Radio continuity program customers during the nine months ended September 30, 2003 compared to the nine months ended September 30, 2002, which resulted in a fewer new member and customer introductory packages, which include premiums that are expensed as new members and customers enroll and lower expenses for catalogs mailed to Audio Book Club members as a result of the Audio Book Club reduced active membership and the timing of catalog mailings

Increase in bad debt expenses of $1,052 to $2,734, for the nine months ended September 30, 2003, as compared to $1,682 for the three months ended September 30, 2002, are principally due to an increase in new members in 2002 from the Internet and our Passages Christian audiobook club whose non-pay rates have been significantly higher than our traditional Audio Book Club members and an increase in bad debt expense relating to The World's Greatest Old-Time Radio continuity program as sales increased. The bad debt experience for The World's Greatest Old-Time Radio continuity program has been what we anticipated.

General and administrative expenses for the nine months ended September 30, 2003 decreased $359 to $5,491 from $5,850 for the nine months ended September 30, 2002. General and administrative expense decreases are principally attributable to lower payroll and related costs, public and investor relations, and travel and entertainment costs partially offset by higher insurance costs. General and administrative expenses for the nine months ended September 30, 2002 also included certain one-time costs relating to the moving of our old-time radio business from Illinois to New Jersey.

Depreciation and amortization expenses for the nine months ended September 30, 2003 were $263, a decrease of $873, as compared to $1,136 for the prior comparable period. The decrease is principally attributable to reductions in the amortization of intangibles, which had been fully amortized or written off during the year ended December 31, 2002.

Net interest expense for the nine months ended September 30, 2003 decreased $1,024 to $1,347 as compared to $2,371 for the nine months ended September 30, 2002. The decrease is principally due to the pay down of a portion of our senior credit facility, a decrease in interest rates on our variable rate debt as interest rates have declined, inclusion in net interest expense of $319 and $663 for the nine months ended September 30, 2003 and 2002, respectively, for amortization of debt discount related to warrants and beneficial conversion features related to our financings and forgiveness in September 2003 of $100 of interest recorded in 2002 to a vendor. Preferred stock dividends were $183 and

$159 for the nine months

ended September 30, 2003 and 2002, respectively. The increase in preferred stock dividends is due to the issuance in May 2003 of 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.

Due to the lower sales and related gross profit, and higher bad debt expense, partially offset by lower general and administrative expenses, amortization, depreciation and interest expense, the Company reported a net loss applicable to common shares of $1,480, or $0.10 per diluted share of common stock for the nine months ended September 30, 2003, as compared to a net loss applicable to common shares for the nine months ended September 30, 2002 of $607, or $.04 per diluted share.

Liquidity and Capital Resources

Historically, the Company has funded its cash requirements through sales of equity and debt securities and borrowings from financial institutions and the Company's principal shareholders.

At September 30, 2003, the Company owed approximately $10,680 to trade and other creditors. Approximately $6,160 of these accounts payable were more than 60 days past due. If the Company does not make satisfactory payments to its vendors they may refuse to continue to provide it products or services on credit, which could interrupt the Company's supply of products or services.

The Company has implemented a series of initiatives to increase cash flow including significant reductions in marketing and advertising expenditures to attract new members to its Audio Book Club. There can be no assurance that the Company will not in the future require additional capital to pay its creditors, fund the expansion of operations, make acquisitions or for working capital. Management believes that additional sources of capital are available if required.

For the nine months ended September 30, 2003, cash increased by $578, as the Company had net cash provided by operating activities of $1,650 and used net cash of $265 and $807 for investing and financing activities, respectively. Net cash provided by operating activities principally consisted of net loss of $1,480, depreciation and amortization expenses of $263, amortization of deferred financing costs and original issue discount of $379, non-current accrued interest and dividends payable of $817, decreases in accounts receivable, inventory and prepaid expenses of $1,389, $468 and $78, respectively, and a net decrease in deferred member acquisition costs of $2,142, partially offset by an increase in royalty advances of $26 and decreases in accounts payable and accrued expenses of $2,383.

The decrease in accounts receivable was primarily attributable to lower sales. The decrease in inventory is principally due to lower sales .The decrease in deferred member acquisition cost is due to changes in the timing and reduction of the size of marketing campaigns to attract new members due both to an attempt to target the best performing members and cash constraints which have limited our ability to execute planned campaigns. The Company actually spent $5,386 on advertising in the nine months ended September 30, 2003; a reduction of $4,773, as compared to $10,159 spent on advertising in the nine months ended September 30, 2002. The increase in prepaid expenses is principally due to the timing of marketing activities.

Net cash used in investing activities consists of acquisition of fixed assets of $15, principally computer equipment and the acquisition of intangible assets and goodwill, including legal fees and other costs incurred in obtaining covenants not to compete from a former employee and a former consultant of $102, and the acquisition of certain old-time radio assets of $148.

In accordance with the terms of its senior credit facility, the Company repaid $1,390 of principal on its senior credit facility during the nine months ended September 30, 2003. On April 9, 2003, the maturity date of the principal amount of the senior credit facility of $4,030 was extended to April 30, 2004 with certain conditions. The Company is required to make payments of $75 per month for the months of October 2003 through March 2004. The interest rate for the revolving credit facility is the prime rate plus 2.5%.

On June 16, 2003, Audio Book Club, Inc. ("ABC"), a wholly owned subsidiary of MediaBay 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 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 terminates a $3,450 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	$ 3,4
Return for cancellation of 325,000 shares of common stock	2
Legal and other costs incurred in connection with the litigation, net of cash received of $350	6
Net settlement of litigation recorded in Contributed Capital	$ 3,0

On October 1, 2003, the Company completed a $1,065 financing consisting of the notes due September 23, 2004. The notes bear interest at 18%, provided 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 has 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. Purchasers of notes included Carl Wolf, Chairman of MediaBay and a wholly owned affiliate of Norton Herrick, a Board member. As of September 30, 2003, the Company had received $965 of the bridge financing.

During the three months ended September 30, 2003, Norton Herrick, a director, 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 included in the $1,065 financing described above. 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 the $0.77, the closing sale price of the Company's 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 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 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 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 Company's former Chairman. The agreement provides, among other things that XNH will provide consulting and advisory services to MediaBay and that XNH will be under the direct supervision of the Company's Board of Directors. For its services, the Company has agreed to pay XNH a fee of $8 per month and to provide Mr. Herrick with health insurance and other benefits applicable to the Company's 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 Chairman of MediaBay, Inc. effective May 1, 2003 and the Company and Mr. Herrick terminated the employment agreement signed as of November 2, 2002 on May 1, 2003.

On April 18, 2003 the Company signed a sixty-six month extension of its lease on its office space in Cedar Knolls, New Jersey. Minimum annual lease commitments including capital improvement payments under all non-cancelable operating leases are as follows:

Year ending December 31,

2003	$ 156
2004	168
2005	192
2006	198
2007	204
Thereafter	310
Total lease commitments	$1,228

Recent Accounting Pronouncements

In May 2003, the FASB issued SFAS 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." This Statement establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances). This Statement is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of FASB 150 had no impact on the Company's operating results or financial condition.

In April 2003, the Financial Accounting Standards Board ("FASB") issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities"("SFAS 149"). SFAS No. 149 amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under Statement 133. With certain exceptions, SFAS No. 149 is effective for contracts entered into or modified after June 30, 2003, and for hedging relationships designated after June 30, 2003. Management does not believe adoption of this standard will have a material impact on the Company's financial position or results of operations.

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities." This interpretation defines when a business enterprise must consolidate a variable interest entity. This interpretation applies immediately to variable interest entities created after January 31, 2003. It applies in the first fiscal year or interim period beginning after June 15, 2003, to entities in which an enterprise holds

a variable interest that it acquired before February 1, 2003. The adoption of this statement is not expected to have a material effect on the Company's financial position or results of operations.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation -- Transition and Disclosure" ("SFAS 148") which amends SFAS No. 123. This statement provides alternative methods of transition for a voluntary change to the fair value-based method of accounting for stock-based employee compensation and amends the disclosure requirements of SFAS No. 123. The transition guidance and disclosure requirements are effective for fiscal years ending after December 15, 2002. The Company has included the required interim disclosure in Note 2 to these Financial Statements. The adoption of this statement did not have a material effect on the Company's financial position or results of operations.

In November 2002, the FASB issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others". This interpretation requires a guarantor to recognize, at the inception of the guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. It also enhances guarantor's disclosure requirements to be made in its interim and annual financial statements about its obligations under certain guarantees it has issued. The initial recognition and initial measurement provisions of this interpretation are applicable on a prospective basis to guarantees issued or modified after December 31, 2002. The disclosure requirements are effective for financial statements of interim or annual periods ending after December 15, 2002. In the normal course of business, the Company does not issue guarantees to third parties; accordingly, this interpretation will not have an effect on the Company's financial position or results of operations.

In April 2002, SFAS No. 145, "Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections", was approved by the FASB. This statement is effective January 1, 2003. Among other things, this statement requires that gains or losses on the extinguishment of debt will generally be required to be reported as a component of income from continuing operations and will no longer be classified as an extraordinary item. Therefore, beginning in 2003, the Company's prior financial statements will need to be reclassified to include those gains and losses previously recorded as an extraordinary item as a component of income from continuing operations.

In July 2002, the FASB issued SFAS No. 146, "Accounting for Exit or Disposal Activities" (SFAS 146"). SFAS 146 requires the recognition of a liability for costs associated with an exit plan or disposal activity when incurred and nullifies Emerging Issues Task Force (EITF) Issue 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)", which allowed recognition at the date of an entity's commitment to an exit plan. The provisions of this statement are effective for exit or disposal activities that are initiated by the Company after December 31, 2002.

In June 2001, the FASB issued SFAS No. 143, "Accounting for Asset Retirement Obligations," effective for fiscal years beginning after June 15, 2002. This statement addresses the diverse accounting practices for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. The adoption of this statement did not have a material effect on the Company's financial position or results of operations.

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 Disclosure of Market Risk

The Company is exposed to market risk for the impact of interest rate changes. As a matter of policy the Company does not enter 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 September 30, 2003, net of original issue discount of $, of $16,646 of which interest on $7,650 principal amount of this debt is payable at the prime rate plus 2.5%. If the prime rate were to increase our interest expense would increase, however a hypothetical 10% change in interest rates would not have had a material impact on our fair values, cash flows, or earnings for the three and nine months ended September 30, 2002. All of our 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 September 30, 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 II - OTHER INFORMATION

Item 2: Change in Securities and Use of Proceeds. (Dollars in thousands, except per shares data)

From January 1, 2003 to September 30, 2003, the Company issued options to purchase 210,000 shares of its common stock to certain directors, employees and consultants to the Company under its 2000 Stock Option plan and 2,123,856 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 155,000 shares of its common stock and options to purchase 323,000 shares expired during the nine months ended September 30, 2003. 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.

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 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 the $0.77, the closing sale price of the Company's stock on May 6, 2003.

On July 31, 2003, a director 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, 2001 was $.78, accordingly, the Company issued to the director a certificate for 107,692 shares of MediaBay common stock.

The foregoing securities were issued in private transactions pursuant to an exemption from the registration requirement offered by Section 4(2) of the Securities Act of 1933.

Item 6: Exhibits and Reports on Form 8-K.

(a) Exhibits

31.1 Rule 13a-14(a) Certificate of Principal Executive Officer

31.2 Rule 13a-14(a) Certificate of Principal Financial Officer

32.1 Certification of Ronald Celmer, 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 2002

(b) Reports on Form 8-K

None

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:November 6, 2003 By: /s/ Ronald Celmer

Ronald Celmer
Chief Executive Officer

Dated:November 6, 2003 By: /s/ John F. Levy

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