

NextWave Wireless Inc.
Form 10-Q
May 15, 2007

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2007

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 000-51958

NEXTWAVE WIRELESS INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

20-5361360

(IRS Employer
Identification No.)

12670 High Bluff Drive, San Diego, California

(Address of principal executive offices)

92130

(Zip Code)

(858) 480-3100

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

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Large accelerated filer

Accelerated filer

Non-accelerated filer

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13, or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

As of May 4, 2007, there were 84,470,000 shares of the Registrant's Common Stock outstanding.

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PART I.**FINANCIAL INFORMATION****ITEM 1. Financial Statements**

NEXTWAVE WIRELESS INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except par value data)

ASSETS	March 31, 2007	December 30, 2006
(unaudited)		
Current assets:		
Cash and cash equivalents	\$ 72,946	\$ 32,980
Short-term investments	380,952	167,705
Accounts receivable, net of allowance for doubtful accounts of \$141 and \$321, respectively	5,697	5,056
Deferred contract costs	2,662	2,397
Prepaid expenses and other current assets	13,973	7,837
Total current assets	476,230	215,975
Restricted cash	75,000	75,000
Wireless spectrum licenses, net	567,303	527,998
Goodwill	62,601	32,184
Other intangible assets, net	25,111	18,570
Property and equipment, net	18,388	17,529
Other noncurrent assets	8,552	9,823
Total assets	\$ 1,233,185	\$ 897,079
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 2,320	\$ 1,630
Accrued expenses	43,605	33,537
Current portion of long-term obligations	5,945	3,065
Deferred revenue	11,381	10,253
Other current liabilities and deferred credits	1,160	1,240
Total current liabilities	64,411	49,725
Deferred income tax liabilities	83,362	75,774
Long-term deferred credits and reserves	5,374	3,324
Long-term obligations, net of current portion	306,684	298,030
Total liabilities	459,831	426,853
Minority interest in subsidiary	139	1,048
Commitments and contingencies		
Redeemable Series A Senior Convertible Preferred Stock, \$0.001 par value; 355 shares authorized; 355 shares issued and outstanding, liquidation preference of \$355,222 at March 31, 2007	351,370	—
Stockholders' equity:		
Preferred stock, \$0.001 par value; 25,000 shares authorized; 355 shares designated as Series A Senior Convertible Preferred Stock; no other shares issued or outstanding	—	—

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Common stock, \$0.001 par value; 400,000 shares authorized; 84,471 and 84,470 issued and outstanding, respectively, at March 31, 2007 and 83,716 and 83,715 issued and outstanding, respectively, at December 30, 2006	84	84
Additional paid-in-capital	622,336	620,430
Common stock in treasury, at cost, 1 share	(10)	(7)
Accumulated other comprehensive loss	(198)	(357)
Accumulated deficit	(200,367)	(150,972)
Total stockholders' equity	421,845	469,178
Total liabilities and stockholders' equity	\$ 1,233,185	\$ 897,079

The accompanying notes are an integral part of these consolidated financial statements.

NEXTWAVE WIRELESS INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data) (unaudited)

	Three Months Ended	
	March 31,	April 1,
	2007	2006
Revenues	\$ 7,746	\$ 3,905
Operating expenses:		
Cost of revenues	3,665	1,807
Engineering, research and development	23,047	11,089
General and administrative	17,567	8,492
Sales and marketing	3,673	1,613
Purchased in-process research and development costs	860	—
Total operating expenses	48,812	23,001
Loss from operations	(41,066)	(19,096)
Other income (expense)		
Interest income	2,073	3,187
Interest expense	(11,139)	(308)
Other income and expense, net	4	(92)
Total other income (expense), net	(9,062)	2,787
Loss before provision for income taxes and minority interest	(50,128)	(16,309)
Income tax benefit (provision)	(177)	209
Minority interest	910	657
Net loss	(49,395)	(15,443)
Less: Preferred stock dividends	(222)	—
Accretion of issuance costs on preferred stock	(2)	—
Net loss applicable to common shares	\$ (49,619)	\$ (15,443)
Net loss per common share - basic and diluted	\$ (0.59)	\$ (0.19)
Weighted average shares used in per share calculation	83,996	81,611

The accompanying notes are an integral part of these consolidated financial statements.

NEXTWAVE WIRELESS INC.
CONSOLIDATED STATEMENT OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND
STOCKHOLDERS' EQUITY
(in thousands) (unaudited)

	Redeemable Series A Senior Convertible Preferred Stock		Common Stock		Additional Paid-In Capital		Treasury Stock		Accumulated Other Comprehensive Income		Accumulated Deficit	Stockholders' Equity
	Shares	Amount	Shares	Amount	Capital	Shares	Amount	Loss	Deficit	Equity		
Balance at December 30, 2006	—	\$ —	83,716	\$ 84	\$ 620,430	(1)	\$ (7)	\$ (357)	\$ (150,972)	\$ 469,178		
Shares issued for stock options and warrants exercised, net of repurchases	—	—	754	—	479	—	(3)	—	—	476		
Share-based compensation expense	—	—	—	—	1,651	—	—	—	—	1,651		
Issuance of redeemable Series A Senior Convertible Preferred Stock at \$1.00 per share for cash in March 2007, net of issuance costs of \$3,854	355	351,146	—	—	—	—	—	—	—	—		
Imputed dividends on Series A Senior Convertible Preferred Stock	—	222	—	—	(222)	—	—	—	—	(222)		
Accretion of issuance costs on Series A Senior Convertible Preferred Stock	—	2	—	—	(2)	—	—	—	—	(2)		
Unrealized net gains on investments	—	—	—	—	—	—	—	159	—	159		
Net loss	—	—	—	—	—	—	—	—	(49,395)	(49,395)		
Balance at March 31, 2007	355	\$ 351,370	84,470	\$ 84	\$ 622,336	(1)	\$ (10)	\$ (198)	\$ (200,367)	\$ 421,845		

The accompanying notes are an integral part of these consolidated financial statements.

NEXTWAVE WIRELESS INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands) (unaudited)

	Three Months Ended	
	March 31,	April 1,
	2007	2006
OPERATING ACTIVITIES		
Net loss	\$ (49,395)	\$ (15,443)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	2,118	1,092
Amortization of intangible assets	2,395	1,184
Non-cash share-based compensation	1,651	506
In-process research and development	860	—
Accretion of interest expense	4,977	288
Minority interest	(910)	(657)
Other non-cash adjustments	109	1,412
Changes in operating assets and liabilities:		
Accounts receivable	204	1,537
Deferred contract costs	(265)	(578)
Prepaid expenses and other current assets	465	(305)
Other assets	981	350
Accounts payable and accrued liabilities	(2,047)	2,563
Deferred revenue	3,301	1,684
Other current liabilities and deferred credits	(101)	(171)
Net cash used in operating activities	(35,657)	(6,538)
INVESTING ACTIVITIES		
Proceeds from maturities of available-for-sale securities	—	117,987
Proceeds from the sale of available-for-sale securities	229,732	63,535
Purchases of available-for-sale securities	(442,820)	(82,816)
Payments for wireless spectrum licenses	(28,208)	(78,077)
Cash paid for business combinations, net of cash acquired	(30,240)	(53)
Purchase of property and equipment	(1,814)	(5,595)
Other, net	(39)	(1,788)
Net cash provided by (used in) investing activities	(273,389)	13,193
FINANCING ACTIVITIES		
Proceeds from the sale of Series A Senior Convertible Preferred Stock, net of costs to issue	351,146	—
Payments on long-term obligations	(2,610)	(2,013)
Proceeds from the sale of common equity interests	476	34
Proceeds from investment by joint venture partner	—	1,546
Net cash provided by (used in) financing activities	349,012	(433)
Net increase in cash and cash equivalents	39,966	6,222
Cash and cash equivalents, beginning of period	32,980	93,649
Cash and cash equivalents, end of period	\$ 72,946	\$ 99,871

The accompanying notes are an integral part of these consolidated financial statements.

NEXTWAVE WIRELESS INC.
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation

Financial Statement Preparation

The unaudited consolidated financial statements have been prepared by NextWave Wireless Inc. ("Nextwave") according to the rules and regulations of the SEC, and therefore, certain information and disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted.

In the opinion of management, the accompanying unaudited consolidated financial statements for the periods presented reflect all adjustments, which are normal and recurring, necessary to fairly state the financial position, results of operations and cash flows. These unaudited consolidated financial statements should be read in conjunction with the audited financial statements for the year ended December 30, 2006, included in NextWave's Annual Report on Form 10-K filed with the United States Securities and Exchange Commission on March 30, 2007.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Change in Fiscal Year End

NextWave operates on a 52-53 week fiscal year ending on the Saturday nearest to December 31 of the current calendar year or the following calendar year. Normally, each fiscal year consists of 52 weeks, but every five or six years the fiscal year consists of 53 weeks. Fiscal year 2007 will be a 52-week year ending on December 29, 2007 and the first 53-week year will occur in 2009. The three month periods ended March 31, 2007 and April 1, 2006 include 13 weeks each.

Accumulated Other Comprehensive Loss

Accumulated other comprehensive loss totaled \$49.2 million and \$15.6 million for the three months ended March 31, 2007 and April 1, 2006, respectively, and includes unrealized gains and losses that are excluded from the consolidated statement of operations and reported as a separate component in stockholders' equity. These unrealized gains and losses represent those on marketable securities that are classified as available-for-sale, and totaled \$0.2 million in unrealized net gains and \$0.2 million in unrealized net losses for the three months ended March 31, 2007 and April 1, 2006, respectively.

Net Loss Per Common Share

Basic net loss per common share for the three months ended March 31, 2007 is computed by dividing net loss applicable to common shares for the period by the weighted average number of common shares outstanding during the period. Basic net loss per common share for the three months ended April 1, 2006 is computed by dividing net loss applicable to common shares for the period by the weighted average number of membership units outstanding during the period, on a converted basis as if NextWave's Corporate Conversion Merger occurred on January 1, 2006. Diluted loss per share assumes that outstanding common shares were increased by shares issuable upon exercise of stock options and warrants for which market price exceeds the exercise price, less shares which could have been purchased by NextWave with the related proceeds, unless antidilutive. Diluted loss per share also considers the impact of the

conversion of the redeemable Series A Senior Convertible Preferred Stock, unless antidilutive. Contingently issuable stock, such as restricted stock or merger consideration, is also included in the diluted loss per share calculations, unless antidilutive. For the three months ended March 31, 2007 and April 1, 2006, diluted loss per common share is computed on the same basis as basic loss per common share as the inclusion of potential shares outstanding would be antidilutive.

Following are securities that could potentially dilute earnings per share in the future that are not included in the determination of diluted loss per share as they are antidilutive. The share amounts are determined using a weighted average of the shares outstanding during the respective periods and assume that March 31, 2007 was the end of the contingency period for any contingently issuable shares in accordance with SFAS 128, "Earnings per Share."

<i>(in thousands)</i>	Three Months Ended	
	March 31, 2007	April 1, 2006
Outstanding stock options	12,702	7,272
Common stock warrants	2,693	500
Contingently issuable shares under advisory contract	833	833
Restricted stock	220	52
Contingent merger consideration for GO Networks, Inc., and related contingent stock bonus plan shares	1,218	—
Series A Senior Convertible Preferred Stock	1,412	—

Redeemable Series A Senior Convertible Preferred Stock

Costs incurred to issue the Series A Preferred Stock are deferred and recorded as a reduction to the reported balance of the preferred stock in the consolidated balance sheet. The costs are accreted using the effective interest method over the period from the date of issuance through March 28, 2017, the stated redemption date. In accordance with Emerging Issues Task Force D-98, the resulting increases from the accretion of the issue costs and accrued dividends on the preferred stock are effected by charges against retained earnings or, in the absence of retained earnings, by charges against paid-in capital. These increases reduce income applicable to common stockholders in the calculation of loss per common share.

Recent Accounting Pronouncements

In June 2006, the Financial Accounting Standards Board (“FASB”) issued Interpretation No. 48, “Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109” (“FIN 48”), effective for NextWave’s fiscal year beginning December 31, 2006. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in financial statements in accordance with FASB Statement No. 109, “Accounting for Income Taxes,” and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. Adoption of this interpretation did not have a material impact on NextWave’s financial statements.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, “Fair Value Measurements” (“SFAS No. 157”). SFAS No. 157 clarifies the principle that fair value should be based on the assumptions market participants would use when pricing an asset or liability and establishes a fair value hierarchy that prioritizes the information used to develop those assumptions. Under the standard, fair value measurements would be separately disclosed by level within the fair value hierarchy. SFAS 157 is effective for NextWave’s fiscal year that begins on December 30, 2007, with early adoption permitted. NextWave’s management is in the process of evaluating the impact of the adoption of SFAS No. 157.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (“SFAS 159”). SFAS 159 permits entities to choose to measure certain financial assets and liabilities and other eligible items at fair value, which are not otherwise currently required to be measured at fair value. Under SFAS 159, the decision to measure items at fair value is made at specified election dates on an irrevocable instrument-by-instrument basis. Entities electing the fair value option would be required to recognize changes in fair value in earnings and to expense upfront cost and fees associated with the item for which the fair value option is elected. Entities electing the fair value option are required to distinguish on the face of the statement of financial position, the fair value of assets and liabilities for which the fair value option has been elected and similar assets and liabilities measured using another measurement attribute. If elected, SFAS 159 is effective for NextWave’s fiscal year that begins on December 30, 2007, with earlier adoption permitted provided that the entity also early adopts all of the requirements of SFAS 159. NextWave’s management is currently evaluating whether or not to elect the option provided for in this standard.

2. Composition of Certain Financial Statement Items***Short-Term Investments and Restricted Cash***

Short-term investments and restricted cash consist of the following:

<i>(in thousands)</i>	March 31, 2007	December 30, 2006
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Municipal securities	\$	361,518	\$	177,436
Commercial paper		40,882		—
U.S. Treasury and Agency obligations		35,272		39,051
Corporate notes		15,250		25,694
Money market funds		3,030		500
Cash		—		24
Total portfolio		455,952		242,705
Less restricted portion		(75,000)		(75,000)
Total unrestricted short-term investments	\$	380,952	\$	167,705

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Wireless Licenses, Goodwill and Other Intangible Assets

Intangible assets consist of the following:

<i>(dollars in thousands)</i>	March 31, 2007			December 30, 2006		
	Weighted Average Life (in Years)	Gross Carrying Amount	Accumulated Amortization	Weighted Average Life (in Years)	Gross Carrying Amount	Accumulated Amortization
Amortized intangible assets:						
Leased wireless spectrum licenses	16.3	\$ 89,251	\$ 5,786	14.1	\$ 82,385	\$ 4,438
Purchased technology	7.0	15,264	2,365	7.0	9,614	1,821
Purchased customer base	7.7	7,000	1,274	8.0	5,960	1,044
Non-compete agreements	3.9	2,900	1,370	4.0	2,800	1,193
Other	8.3	2,902	346	7.4	2,002	252
		\$ 117,317	\$ 11,141		\$ 102,761	\$ 8,748
Intangible assets not subject to amortization:						
Wireless spectrum licenses		\$ 483,838			\$ 450,051	
Goodwill		62,601			32,184	
Purchased tradenames and trademarks		2,400			2,504	
		\$ 548,839			\$ 484,739	

In March 2007, NextWave acquired all of the outstanding shares of common stock of 4253311 Canada Inc., a Canadian company, which resulted in the addition of \$33.8 million of wireless spectrum licenses not subject to amortization. The assets of the company are comprised almost entirely of wireless spectrum. The acquisition of 4253311 Canada Inc. was accounted for as an acquisition of assets rather than as an acquisition of a business based on guidance under EITF 98-3, "Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business." The value assigned to the wireless spectrum includes the cash purchase price of \$26.0 million, closing costs of \$0.2 million, and \$7.6 million in associated deferred tax liabilities as determined in accordance with EITF 98-11, "Accounting for Acquired Temporary Differences in Certain Purchase Transactions That Are Not Accounted for as Business Combinations," ("EITF 98-11"). During the three months ended March 31, 2007, NextWave acquired other licensed spectrum rights for \$2.7 million in cash and \$4.2 million through the assumption of lease liabilities.

The \$30.4 million increase in goodwill in the consolidated balance sheets from December 30, 2006 to March 31, 2007, resulted from \$31.2 million from current year business acquisitions, reduced by \$0.8 million for reductions to accrued liabilities related to 2005 and 2006 acquisitions.

The estimated aggregate amortization expense for amortized intangible assets owned as of March 31, 2007, is expected to be \$7.5 million during the remainder of 2007 and \$10.3 million, \$9.8 million, \$9.6 million, \$9.4 million and \$9.6 million during fiscal years 2008, 2009, 2010, 2011 and thereafter, respectively.

Property and Equipment

Property and equipment, net, consists of the following:

<i>(in thousands)</i>	March 31, 2007	December 30, 2006
Furniture and equipment	\$ 15,611	\$ 13,626
Purchased software	7,724	7,296
Leasehold improvements	2,439	2,358
Construction in progress	1,328	846
	27,102	24,126
Less: Accumulated depreciation	(8,714)	(6,597)
Total property and equipment, net	\$ 18,388	\$ 17,529

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Accrued Expenses

Accrued expenses consist of the following:

<i>(in thousands)</i>	March 31, 2007	December 30, 2006
Accrued business acquisition related payables	\$ 15,616	\$ 1,251
Accrued payroll and related expenses	11,130	9,417
Accrued expenses	5,538	4,870
Accrued interest	5,172	11,178
Accrued professional fees	3,754	3,746
Accrued equity distributions payable	2,034	2,034
Other	361	1,041
Total accrued liabilities	\$ 43,605	\$ 33,537

3. Business Combinations**Acquisition of GO Networks**

In February 2007, NextWave acquired all of the outstanding common stock and warrants of GO Networks, Inc., a privately-held company headquartered in Mountain View, CA with research and development facilities in Tel Aviv, Israel. GO Networks develops advanced mobile Wi-Fi network solutions for service providers. The primary reason for the acquisition is to complement NextWave's WiMAX product line with wide-area and local-area wireless broadband services using stand-alone or integrated Wi-Fi/WiMAX solutions that utilize both licensed and license-exempt spectrum.

The total cost of the acquisition of \$16.7 million includes cash paid for the common stock and warrants of \$13.2 million, interim funding of \$1.9 million, closing costs of \$0.7 million, the assumption of \$1.3 million in debt which was paid at closing, less cash acquired of \$0.4 million. Under the purchase method of accounting, the purchase price was preliminarily allocated to the assets acquired and liabilities assumed based upon their estimated fair values at the date of acquisition in accordance with SFAS No. 141 as follows:

<i>(in thousands)</i>	
Prepaid and other current assets	\$ 693
Property and equipment	1,109
Other noncurrent assets	26
Goodwill	22,026
Accounts payable and accrued liabilities	(2,028)
Long-term obligations	(5,111)
Total acquisition cost	\$ 16,715

The excess of the purchase price over the acquired net tangible assets of \$22.0 million has been preliminarily allocated to goodwill in the consolidated balance sheet and is expected to be allocated between goodwill and identifiable intangible assets during the second quarter of 2007 once NextWave has completed a purchased intangible asset valuation. The related impact from value assigned to in-process research and development costs or to amortization expense, if any, will be adjusted on a prospective basis.

The results of GO Networks' operations have been included in the accompanying consolidated financial statements from the date of acquisition.

Additional purchase consideration of up to \$25.6 million and \$0.1 million may be paid in shares of NextWave common stock and cash, respectively, subject to the achievement of specified operational milestones in February and August 2008, which include customer acceptance of certain product units and the continued employment of key employees. In accordance with SFAS No. 141, "Business Combinations," the contingent consideration, if any, paid to non-employee stockholders and to employee stockholders whose consideration is not contingent upon continuing employment will be recorded as additional purchase price when the contingency is resolved and the consideration is determinable and becomes issuable. In accordance with EITF 95-8, "Accounting for Contingent Consideration Paid to the Shareholders of an Acquired Enterprise in a Purchase Business Combination," contingent consideration, if any, paid to employee stockholders that is contingent upon continuing employment will be expensed over any remaining earnout period as compensation when the payment becomes probable. The probability of achievement of the performance conditions will be reassessed at each reporting date.

NextWave also adopted the GO Networks Employee Stock Bonus Plan, whereby a select group of employees may receive up to an aggregate of \$5.0 million in shares of NextWave common stock, valued at the time of issuance, upon the achievement of specified operational milestones in February and August 2008, which include customer acceptance of certain product units and the continued employment of the employee in addition to key employees. In accordance with SFAS 123(R), "Share-Based Payment," the fair value of the stock bonuses will be determined on the date of grant and amortized to compensation expense over the estimated service period once the achievement of the milestones becomes probable. The probability of achievement of the performance conditions will be reassessed at each reporting date.

Pro Forma Results

The following unaudited pro forma information assumes that the acquisition of GO Networks occurred on December 31, 2006 and January 1, 2006, respectively. These unaudited pro forma results have been prepared for comparative purposes only and do not purport to be indicative of the results of operations that would have actually resulted had the acquisition occurred on these dates, or of future results of operations. The unaudited pro forma results for the three months ended March 31, 2007 and April 1, 2006, are as follows:

<i>(in thousands)(unaudited)</i>	Three Months Ended	
	March 31, 2007	April 1, 2006
Revenues	\$ 7,746	\$ 3,905
Net loss	(51,153)	(18,376)
Net loss applicable to common shares	(51,377)	