

Endavo Media & Communications, Inc.  
Form 424B3  
May 20, 2005

PROSPECTUS

Filed Pursuant to 424(b)(3)  
Registration No. 333-124315

ENDAVO MEDIA AND COMMUNICATIONS, INC.

10,064,449 shares of our common stock

This prospectus relates to the resale by the selling stockholders of up to 10,064,449 shares of common stock, including up to (i) 1,597,534 shares of common stock issuable upon conversion of \$1,425,000 aggregate principal amount 8% senior secured convertible promissory notes issued to certain selling stockholders based upon an assumed conversion price of \$0.892 per share, (ii) 1,597,529 shares of common stock issuable upon the exercise of warrants issued to holders of the foregoing notes, (iii) 3,195,067 shares of common stock issuable upon the conversion of additional 8% senior secured convertible promissory notes issuable upon exercise of investment right "A" and "B" held by the current noteholders and based upon an assumed note conversion price of \$0.892 per share and (iv) 3,195,058 shares of common stock issuable upon the exercise of warrants issuable upon exercise of investment rights "A" and "B." The selling stockholders may sell common stock from time to time in the principal market on which the stock is traded at the prevailing market price or in negotiated transactions.

This prospectus also relates to the issuance of (i) 239,630 shares of common stock underlying warrants and (ii) 239,630 shares of common stock underlying convertible debenture warrants issued to our placement agent, H. C. Wainwright & Co., Inc., and certain of its principals. The placement agent warrants have an exercise price of \$.89 per share and the convertible debenture warrants have an exercise price of \$1.27.

We are not selling any shares of Common Stock in this offering and therefore will not receive any proceeds from this offering. We may, however, receive proceeds upon the exercise of the warrants described throughout this prospectus in the event that such warrants are exercised. We will bear all costs associated with this registration.

These shares may be sold by the selling stockholders from time to time in the over-the-counter market or other national securities exchange or automated interdealer quotation system on which our common stock is then listed or quoted, through negotiated transactions or otherwise at market prices prevailing at the time of sale or at negotiated prices.

The selling stockholders, and any participating broker-dealers, may be deemed to be "underwriters" within the meaning of the Securities Act of 1933, as amended, or the "Securities Act," and any commissions or discounts given to any such broker-dealer may be regarded as underwriting commissions or discounts under the Securities Act. The selling stockholders have informed us that they do not have any agreement or understanding, directly or indirectly, with any person to distribute their common stock.

Our common stock is registered under Section 12(g) of the Securities Exchange Act of 1934 and is listed on the over-the-counter bulletin board under the symbol "EDVO." The closing price of our common stock as reported on the over-the-counter bulletin board on April 21, 2005 was \$0.89.

Investing in these securities involves significant risks. Investors should not buy these securities unless they can afford to lose their entire investment. See "Risk Factors" beginning on page 6.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a

criminal offense.

The date of this prospectus is May 20, 2005.

---

## TABLE OF CONTENTS

	Page
Prospectus Summary	1
Risk Factors	6
Use Of Proceeds	18
Market For Common Equity And Related Stockholder Matters	18
Management's Discussion And Analysis	19
Off-Balance Sheet Arrangements	24
Effect of Inflation and Changes In Prices	24
Business	24
Description Of Property	30
Legal Proceedings	30
Management	31
Description Of Securities	36
Indemnification For Securities Act Liabilities	38
Selling Stockholders	38
Plan Of Distribution	41
Legal Matters	42
Experts	42
Changes In And Disagreements With Accountants	42
Available Information	43
Index To Consolidated Financial Statements	44

The selling stockholders are offering and selling shares of our common stock only to those persons and in those in jurisdictions where these offers and sales are permitted.

---

You should rely only on the information contained in this prospectus, as amended and supplemented from time to time. We have not authorized anyone to provide you with information that is different from that contained in this prospectus. If anyone provides you with different or inconsistent information, you should not rely on it. The information in this prospectus is complete and accurate only as of the date of the front cover regardless of the time of delivery or of any sale of shares. Neither the delivery of this prospectus nor any sale made hereunder shall under any circumstances create an implication that there has been no change in our affairs since the date hereof.

---

This prospectus has been prepared based on information provided by us and by other sources that we believe are reliable. This prospectus summarizes information and documents in a manner we believe to be accurate, but we refer you to the actual documents or the agreements we entered into for additional information of what we discuss in this prospectus.

---

We issue from time to time securities convertible or exercisable into common stock. We cannot predict the actual number of shares that we will be required to issue upon exercise or conversion because this number depends on variables that cannot be known precisely until the conversion or exercise date. The most significant of these variables is the closing price of our common stock on a certain day or during certain specified periods of time. Nevertheless, we can estimate the number of shares of common stock that may be issued using certain assumptions (including but not

limited to assuming a conversion and/or exercise date). These calculations are illustrative only and will change based, among other things, on changes in the market price of our common stock and the number of outstanding shares.

---

In making a decision to invest in our common stock, you must conduct your own evaluation of the information provided including, among other things, of our company; its business, financial condition and results of operations, the terms of this offering and the common stock, our capital structure, our recent acquisitions and the risks factors and uncertainties. You should not consider any information in this prospectus to be legal, business, tax or other advice. You should consult your own attorney, business advisor and tax advisor for legal, business and tax advice regarding an investment in the common stock due to your particular circumstances.

---

In this prospectus, “Endavo,” the “Company,” “we,” “us” and “our” refer to Endavo Media and Communications, Inc. and its subsidiaries, taken as a whole, unless the context otherwise requires.

---

This prospectus contains trademarks, service marks and registered marks of Endavo Media and Communications, Inc. and its subsidiaries and other companies, as indicated. Unless otherwise provided in this prospectus, as amended and supplemented from time to time, trademarks identified by ® and ™ are registered trademarks or trademarks, respectively, of Endavo Media and Communications, Inc. or its subsidiaries. All other trademarks trade names and service names are the properties of their respective owners.

---

Our principal offices are located at 50 West Broadway, Suite 400, Salt Lake City, Utah, 84101, and our telephone number is (801) 297-8500. Our web site is located at [www.endavo.com](http://www.endavo.com). Information contained on our web site is not part of this prospectus. We were formed under the laws of the State of Delaware.

## PROSPECTUS SUMMARY

The following summary highlights selected information contained in this prospectus. This summary does not contain all the information you should consider before investing in the securities. Before making an investment decision, you should read the entire prospectus carefully, the “Risk Factors” section on page 6, and the financial statements and the notes to the financial statements beginning on page F-1. You should also review the other available information referred to in the section entitled “Available Information” on page 43. As used throughout this prospectus, the terms “Endavo,” the “Company,” “we,” “us,” and “our” refer to Endavo Media and Communications, Inc., a Delaware corporation.

### GENERAL OVERVIEW

Historically, we have provided bundled broadband services, including high-speed Internet services, cable television and Voice over Internet Protocol, or “VOIP,” to residential and commercial customers through fiber-based community networks and over fiber-to-the-premises, or “FTTP.” We plan to continue delivering Internet Protocol, or “IP,” voice, video and data services to our current residential customer base in Utah and also to operate, support and expand our network facilities in both our local and other potential markets. However, our new business plan also includes the development of a distribution and transaction management system over a national IP Multicast network services delivery system that will enable the distribution of digital entertainment and communications services to connected customers and communities. We call this distribution and transaction management system the Endavo EcoSystem™.

Once our technologies and products are sufficiently developed and tested, we plan to market our “d-commerce marketplace” of digital services and content, on a wholesale and retail basis, to defined groups of customers. We define the d-commerce marketplace as any product or service that can be delivered over an IP network. This includes individual pieces of media, such as movies, music, books or images, and complete digital services, such as VoIP and secure instant messages. We intend to initially target our marketing efforts toward geographical markets located within close proximity to, or already connected to, our national fiber network and that have existing local or metropolitan fiber network infrastructure.

Our principal offices are located at 50 West Broadway, Suite 400, Salt Lake City, Utah, 84101, and our telephone number is (801) 297-8500. Our web site is located at [www.endavo.com](http://www.endavo.com). Information contained on our web site is not part of this prospectus. We were formed under the laws of the State of Delaware.

### RECENT DEVELOPMENTS

#### Private Placement

On February 22, 2005, we entered into (and simultaneously completed the transaction contemplated by) a Securities Purchase Agreement with the entities listed below pursuant to which we issued \$1,425,000 principal amount of 8% Senior Secured Convertible Notes and related securities.

Name	Aggregate Principal Amount of Notes	Warrants	Additional Investment Right “A”	Additional Investment Right “B”
Iroquois Capital L.P.	\$ 425,000	476,457	\$ 425,000	\$ 425,000
Notzer Chesed, Inc.	\$ 100,000	112,107	\$ 100,000	\$ 100,000
Basso Multi-Strategy Holding Fund Ltd.	\$ 100,000	112,107	\$ 100,000	\$ 100,000

Edgar Filing: Endavo Media & Communications, Inc. - Form 424B3

Double U Master Fund LP	\$	100,000	112,107	\$	100,000	\$	100,000
Enable Growth Partners LP	\$	150,000	168,161	\$	150,000	\$	150,000
Nite Capital LP	\$	300,000	336,332	\$	300,000	\$	300,000
Puritan LLC	\$	100,000	112,107	\$	100,000	\$	100,000
TCMP3 Partners	\$	150,000	168,161	\$	150,000	\$	150,000
<b>TOTAL</b>	<b>\$</b>	<b>1,425,000</b>	<b>1,597,529</b>	<b>\$</b>	<b>1,425,000</b>	<b>\$</b>	<b>1,425,000</b>

The following summarizes the principal terms of the transaction:

***Terms of Senior Secured Convertible Promissory Note***

Pursuant to the Securities Purchase Agreement, we sold to the parties listed above an aggregate of \$1,425,000 principal amount of 8% senior secured convertible notes, together with warrants to purchase an aggregate of 1,597,529 shares of our common stock, and two series of additional investment rights entitling the holders to purchase from us up to an additional \$2,850,000 of 8% senior secured convertible notes and warrants to purchase an aggregated 3,195,058 shares of our common stock.

These notes will be senior to or pari passu with all our current and future indebtedness and we will pledge all of our assets as collateral for the notes. Additional terms of the 8% senior secured convertible notes include:

- Unless converted or redeemed as described below, the 8% senior secured convertible notes are due on February 22, 2007.
  - 8% annual interest, payable semi-annually in arrears beginning June 30, 2005. The interest is payable either in cash or at our option (subject to the satisfaction of certain conditions) in shares of our common stock valued at 85% of the volume weighted average price of our common stock for the 20 trading days prior to the payment date.
- While the notes are outstanding, if we issue equity or equity linked securities at a price lower than the conversion price, then the conversion price of these 8% senior secured convertible notes will be reduced to the same price. If we issue any variable priced equity securities or variable price equity linked securities, then the conversion price of these 8% senior secured convertible notes will be reduced to the lowest issue price applied to those securities.
- The notes are convertible at any time at the option of the holder into shares of our common stock at a conversion price of \$.892 per share (which was 70% of the average closing market price of the common stock on the over-the-counter bulletin board for the 20 trading days prior to the closing of the transaction).
- If we do not achieve revenues of at least \$4,000,000 for calendar year 2005, the conversion price of the notes will be adjusted to 85% of the volume weighted average closing market price of the common stock on the over-the-counter bulletin board for the 20 trading days prior to the release of the calendar 2005 financial statements, but in no event higher than the initial conversion price of \$.892. The conversion price is also subject to adjustment upon the occurrence of certain specified events, including stock dividends and stock splits, pro rata distributions of equity securities, evidences of indebtedness, rights or warrants to purchase common stock or cash or any other asset, mergers or consolidations, or certain issuances of common stock at a price below the initial conversion price of \$.892 per share, subject to adjustment as set forth above.
- The number of shares of our common stock acquired by any holder upon conversion of the notes is limited to the extent necessary to ensure that following the conversion the total number of shares of our common stock beneficially owned by the holder does not exceed 4.999% of our issued and outstanding common stock,
- We can prepay all or any portion of the principal amount of the notes, plus any accrued but unpaid interest at 115% of face amount, but only if certain equity conditions are satisfied for underlying conversion shares, including an effective registration. If we should elect to prepay the notes, the holders will have 10 trading days to convert the notes into shares of our common stock. If we elect to prepay the notes, we must do so pro-rata amongst the holders.



### ***Terms of Warrants***

We also issued warrants to purchase up to 1,597,529 shares of our common stock. The warrants are exercisable for five years from the date of issuance at an exercise price of \$1.27 per share, which was 100% of the average closing market price of the common stock on the over-the-counter bulletin board for the 20 trading days prior to the closing of the transaction.

The conversion price is also subject to adjustment upon the occurrence of certain specified events, including stock dividends and stock splits, pro rata distributions of equity securities, evidences of indebtedness, rights or warrants to purchase common stock or cash or any other asset, mergers or consolidations, or certain issuances of common stock at a price below the initial conversion price of \$1.27 per share, subject to adjustment.

The warrants include a “cashless exercise” feature, which permits the holder to exercise the warrants by surrender of a portion of the warrants. The cashless exercise feature is available to the holder, if at the time of exercise, there is not in effect a registration statement covering the shares underlying the warrants are registered.

### ***Terms of Investment Rights***

We also issued two additional investment rights - investment right A and investment right B. Each investment right separately entitles the holders to purchase up to an additional \$1,425,000 or an aggregate of 2,850,000, principal amount of 8% senior secured convertible notes and warrants to purchase up to an additional 1,597,529, or an aggregate of 3,195,058, shares of our common stock beginning on the date of the registration of the underlying shares of common stock and ending six months thereafter. The terms and conditions of the securities contained in these additional investment rights will be identical to the initial notes and warrants. The terms of investment right A and investment right B are identical, except that we have the right to redeem (for no consideration) investment right A if the weighted average closing price of our common stock exceeds \$1.78 (200% of the original conversion price) for 20 consecutive trading days, our common stock trades at least 75,000 shares a day during the period, and a registration statement covering the shares issuable upon conversion is in effect.

### ***Registration of Common Stock***

We agreed to file a registration statement with the Securities and Exchange Commission registering the shares of common stock issuable upon the conversion of the notes, the exercise of the warrants, and the shares related to the additional investment right if it is exercised in the future. We have also granted the purchaser’s piggy-back registration rights under certain circumstances. If we had failed to file the registration statement on a timely basis, or if it is not declared effective by the Securities and Exchange Commission within a maximum of 120 days from the filing date, we are required to pay to the investors liquidated damages equal to 2.0% of the amount invested and shall pay to the investors liquidated damages equal to 1.0% of the amount invested for each subsequent 30-day period.

### ***Exchange Rights***

For the 24-months from the date of the closing, if we complete a private equity or equity-linked financing, the holders of the notes may exchange the notes at 100% of face value for the securities in such new financing, provided that the exchange is in compliance with applicable securities laws.

### ***Right of First Offer***

So long as they hold any notes, the note holders will have the right of first offer to purchase all or part of any private financing, subject to carve outs for employee options plans, the issuance of stock for situations involving strategic partnerships, acquisition candidates and underwritten public offerings of at least \$15 million consummated within 12 months after the Closing.



### ***Change of Control***

In the of a third party acquiring greater than 50% in voting rights in one or a series of related transaction, the holders may elect to have the Notes redeemed by us at 110% of face value plus all accrued interest and unpaid interest, which, at our option, may be paid in cash or common stock.

### ***Placement Agent Fees; Other Fees***

We engaged H. C. Wainwright & Co., Inc., as the exclusive placement agent in connection with the private placement. Under our agreement with Wainwright we paid them a cash fee of \$128,250 (9% of the gross proceeds of the financing plus a non-accountable cash allowance of 2% of the gross proceeds, less any legal fees payable to counsel to the investors). We paid the investors \$35,000 for the legal fees they incurred in connection with this transaction. In addition, we issued to Wainwright, warrants to purchase 239,630 shares of common stock at \$.89 and 239,630 shares of common stock at \$1.27. The warrants have the same terms as the warrants issued to the investors. In addition, we agreed to pay to Wainwright, a cash fee of 8% of the aggregate consideration received by us from the exercise of any warrants.

### **Reverse Stock Split**

We recently took steps to address an oversight in an earlier attempt to effect a combination of our common stock through a reverse stock split. We intended to consummate a 1-for-16 reverse stock split of our common stock in September 2004. Our books and records and those of our transfer agent have continually reflected this transaction as contemplated. However, we discovered that an amendment to our certificate of incorporation was not properly filed at the time. Accordingly, we have taken the appropriate steps to rectify this oversight. The certificate of amendment to our certificate of incorporation, which we intend to file with the Delaware Secretary of State, will only effect those shares that were outstanding as of September 23, 2004, the original effective date of the intended reverse stock split. Accordingly, these efforts should not have any effect on the current holders of our common stock.

### **Preferred Stock Exchange**

In September 2004, prior to the effectiveness of the 1-for-16 reverse stock split discussed above, certain shareholders exchanged 36,646,158 shares of common stock for 3,821,197 shares of our newly created Series A Preferred Stock.

The Series A Preferred Stock was not effected by the subsequent reverse stock split also effected in September 2004 and, therefore, each share of Series A Preferred Stock is convertible into 9.6 shares of our common stock at any time after September 2005, which is the one year anniversary of their issuance.

The shares of Series A Preferred Stock do not have a stated dividend rate and have a liquidation preference of \$.001 per share. Each share is also entitled to vote with the common shareholders as if such share had converted to common.

**SUMMARY FINANCIAL INFORMATION**

The following financial information is derived from our audited financial statements for the fiscal years ended December 31, 2004 and 2003. This information is only a summary and does not provide all of the information contained in our financial statements and related notes. You should read the "Management's Discussion and Analysis" beginning on page 19 of this prospectus and our financial statements and related notes beginning on page F-1.

<b>Statement of operations data:</b>	<b>Years Ended December 31,</b>	
	<b>2004</b>	<b>2003</b>
Revenues	\$ 178,000	\$ 431,000
Cost of Revenue	419,000	511,000
Gross (Loss)	(241,000)	(80,000)
Selling, General and Administrative Costs	(3,283,000)	(3,868,000)
Operating (Loss)	(4,154,000)	(3,948,000)
Other Income (Expense)	(1,149,000)	(348,000)
Loss From Litigation Settlements	(213,000)	--
Loss From Impairment of Assets	(417,000)	--
Net (Loss)	\$ (5,303,000)	\$ (4,296,000)

<b>Balance sheet data:</b>	<b>As of</b>
	<b>December 31, 2004</b>
Working Capital (deficit)	\$ 2,457,000
Total Assets	\$ 251,000
Total Liabilities and stockholders' deficit	\$ 251,000

**THE OFFERING**

Common stock offered by selling stockholders Up to 10,064,449 shares of our common stock, which includes up to (i) 1,597,534 shares of common stock issuable upon conversion of \$1,425,000 aggregate principal amount 8% senior secured convertible promissory notes issued to certain selling stockholders based upon an assumed conversion price of \$0.892 per share, (ii) 1,597,529 shares of common stock issuable upon the exercise of warrants issued to holders of the foregoing notes, (iii) 3,195,067 shares of common stock issuable upon the conversion of additional 8% senior secured convertible promissory notes issuable upon exercise of investment right "A" and "B" held by the current noteholders and based upon an assumed note conversion price of \$0.892 per share, (iv) 3,195,058 shares of common stock issuable upon the exercise of warrants issuable upon exercise of investment rights "A" and "B" and (v) 479,260 shares of common stock

issuable upon exercise of warrants and convertible debenture warrants held by H. C. Wainwright & Co., Inc., and certain of its principals, as our exclusive placement agent. This number represents 50.1% of the total number of shares to be outstanding following this offering assuming the exercise of all securities being registered as of April 1, 2005.

Common stock to be outstanding after the offering

Up to 20,565,449 shares assuming the exercise and conversion of all securities being registered as of April 1, 2005.

Risk factors	See "Risk Factors," beginning on page 6 for a description of certain factors you should consider before making an investment in our common stock.
Use of proceeds	We will not receive any proceeds from the sale of the common stock. However, we will receive the exercise price of any common stock we issue to the selling stockholders upon exercise, if any, of the warrants. We expect to use the proceeds received from any exercise of warrants for general working capital purposes.
Over-The-Counter Bulletin Board Symbol	EDVO

The above information regarding common stock to be outstanding after the offering is based on 10,501,000 shares of common stock outstanding as of April 1, 2005 and assumes the subsequent issuance of common stock to the selling stockholders, conversion of the promissory notes, exercise of warrants and exercise of the investment rights "A" and "B" by our selling stockholders.

## RISK FACTORS

INVESTMENT IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. YOU SHOULD CONSIDER THE FOLLOWING DISCUSSION OF RISKS AS WELL AS OTHER INFORMATION IN THIS PROSPECTUS. THE RISKS AND UNCERTAINTIES DESCRIBED BELOW ARE NOT THE ONLY ONES. ADDITIONAL RISKS AND UNCERTAINTIES NOT PRESENTLY KNOWN TO US OR THAT WE CURRENTLY DEEM IMMATERIAL ALSO MAY IMPAIR OUR BUSINESS OPERATIONS. IF ANY OF THE FOLLOWING RISKS ACTUALLY OCCUR, OUR BUSINESS COULD BE HARMED. IN SUCH CASE, THE TRADING PRICE OF OUR COMMON STOCK COULD DECLINE.

### **RISKS RELATED TO OUR BUSINESS**

**We have a history of losses, anticipate future losses and our independent auditors have expressed doubt about our ability to continue as a going concern, any of which may hinder our ability to obtain future financing.**

In their report for our most recent fiscal year, our independent auditors stated that our financial statements for the year ended December 31, 2004 were prepared assuming that we would continue as a going concern. Our ability to continue as a going concern is an issue raised as a result of a loss for the year ended December 31, 2004 in the amount of approximately \$5,303,000 and a loss for the year ended December 31, 2003 in the amount of approximately \$4,296,000. We continue to experience net operating losses. Our ability to continue as a going concern is subject to our ability to generate a profit and/or obtain necessary funding from outside sources, including obtaining additional funding from the sale of our securities, increasing sales or obtaining loans and grants from various financial institutions where possible. The going concern qualification in the auditor's report increases the difficulty in meeting such goals and there can be no assurances that such methods will prove successful. If we do not continue as a going concern, stockholders may lose their entire investment.

**We may have difficulty raising additional capital, which could deprive us of necessary resources to grow our business and achieve our business objectives.**

We expect to continue to devote capital resources to fund continued development of our voice, video and data services and Internet Protocol, or "IP," open standard architecture and maintain and grow existing marketing capacity. In order to support the initiatives envisioned in our business plan, we intend to raise additional funds through the sale of equity, debt or a combination of the two. Our ability to raise additional financing depends on many factors beyond our control, including the state of capital markets, the market price of our common stock and the development, or prospects for development, of competitive technology by others.

Because our common stock is listed on the over-the-counter bulletin board, many investors may not be willing or allowed to purchase it or may demand steep discounts. Sufficient additional financing may not be available to us or may be available only on terms that would result in further dilution to the current owners of our common stock. If we are unable to raise additional funds when we need them, we may have to severely curtail our operations.

**We may not successfully enhance existing or develop new products and services in a cost-effective manner to meet customer demand in the rapidly evolving market for voice, video and data services.**

The opportunity for voice, video and data services in residential, commercial, governmental and educational markets is characterized by rapidly changing technology, evolving industry standards, changes in customer needs and frequent new service and product introductions. We are currently focused on developing and evaluating technologies and applications associated with voice, video and data services over a fiber network; developing applications to enhance customers' experiences; and researching and testing technologies used to deliver broadband services, among others. Our future success will depend, in part, on our ability to use leading technologies effectively, to continue to develop our technical expertise, to enhance our existing services and to develop new services that meet changing customer needs on a timely and cost-effective basis. We may not be able to adapt quickly enough to changing technology, customer requirements and industry standards. If we fail to use new technologies effectively, to develop our technical expertise and new services or to enhance existing services on a timely basis, either internally or through arrangements with third parties, our product and service offerings may fail to meet customer needs, which would adversely affect our revenues.

**We may not be able to successfully implement our broadband strategy, which could adversely affect our ability to grow or sustain revenues and our profitability.**

Our broadband, or high-speed, services comprised a substantial portion of our total customer base, and our broadband services have favorably contributed to our overall revenue per subscriber. One component of our strategy for increasing our broadband customer base and revenues is to ensure we can cost-effectively purchase wholesale broadband access. We continue to experience resistance from the regional bell operating companies, "RBOCs," and cable providers in gaining cost-effective, wholesale access to their networks over which we could provide our high-speed access services. We continue to observe competitive retail pricing by the RBOCs for high-speed access without corresponding declines in the prices for wholesale access, which inhibits our ability to compete on a cost-effective basis. Cable providers have generally resisted granting us wholesale access to their networks to provide high-speed access services and have generally not been required by law to make access available. Our results of operations could be adversely affected if we are unable to maintain or expand our broadband footprint or are unable to obtain wholesale prices that allow us to cost effectively sell our high-speed services. A significant component of our voice, video and data strategy is managing and reducing the costs associated with delivering services, including recurring service costs such as telecommunications and customer support costs as well as costs incurred to add new customers such as sales and marketing. While we believe cost reductions associated with the delivery of our services will contribute positively to overall operating profit margins, our profitability would be adversely affected if we are unable to continue to manage and reduce recurring service costs associated with the delivery of our services and costs incurred to add new broadband customers.

**Competitive product, price or marketing pressures could cause us to lose existing customers, or may cause us to reduce our prices for our services, which could adversely impact our revenues.**

The voice, video and data services industry is intensely competitive. Some of our competitors have significantly greater financial, technical, manufacturing, marketing and distribution resources, as well as greater experience in the industry than we have. The particular solutions our product lines address can also be addressed by other voice, video and data services by our competitors. Many of these alternatives are widely accepted by potential customers and have a long history of use. Competitors have used and may continue to use aggressive marketing efforts, including significantly discounting the retail price of their services to attract new subscribers. There can be no assurance that in response to these marketing efforts we will not experience increased churn with respect to these services. Increased churn rates indicate customers are discontinuing services, which result in a decrease in our customer base and adversely impacts our revenue. If any of these possibilities occur, it may adversely impact our revenue and subscribers we are able to add. Competition may additionally result in price reductions, reduced gross margins and loss of market



share.

7

---

**Our service offerings may fail to be competitive with existing and new competitors.**

Current and prospective competitors include many large companies that have substantially greater market presence, financial, technical, marketing and other resources than we have. We compete directly or indirectly with the following categories of companies:

- CLECs, such as Qwest;
- Local, regional, free or value-priced ISPs, such as United Online, Mindspring, Earthlink;
- National telecommunications companies, such as AT&T and MCI;
- RBOCs, such as SBC, Verizon, BellSouth and Qwest;
- Content companies, such as Yahoo! and Vonage, who have expanded their service offerings; and
- Cable television companies providing broadband access or video on demand, including Comcast, Charter and Cox Communications, Inc.

Competition is likely to continue increasing, particularly as large diversified telecommunications and media companies continue to provide voice, video and data services. Diversified competitors may continue to bundle other content, services and products with Internet access services, potentially placing us at a significant competitive disadvantage.

As competition in the telecommunication market continues to intensify, competitors may merge or form strategic alliances that would increase their ability to compete with us for subscribers. These relationships may negatively impact our ability to form or maintain our own strategic relationships and could adversely affect our ability to expand our customer base.

**Service interruptions or impediments could harm our business.**

**Harmful software programs.** Our network infrastructure and the networks of our third-party providers are vulnerable to damaging software programs, such as computer viruses and worms. Certain of these programs have disabled the ability of computers to access the Internet or other services we provide, requiring users to obtain technical support. Other programs have had the potential to damage or delete computer programs. The development and widespread dissemination of harmful programs has the potential to seriously disrupt usage. If usage is significantly disrupted for an extended period of time, or if the prevalence of these programs results in decreased usage of our voice, video or data services, our business could be materially and adversely impacted.

**Security breaches.** We depend on the security of our network and, in part, on the security of the network infrastructures of our third-party service providers and our outsourced customer support service providers. Unauthorized or inappropriate access to, or use of, our network, computer systems and services could potentially jeopardize the security of confidential information, including credit card information, of our subscribers and of third parties. Consumers or businesses may use our services to perpetuate crimes in the future. Subscribers or third parties may assert claims of liability against us as a result of any failure by us to prevent these activities. Although we use security measures, there can be no assurance that the measures we take will be successfully implemented or will be effective in preventing these activities. Further, the security measures of our third-party providers may be inadequate. These activities may subject us to legal claims, may adversely impact our reputation, and may interfere with our ability to provide our services, all of which could have a material adverse effect on our business, financial position and results of operations.

***Natural disaster or other catastrophic event.*** Our operations and services depend on the extent to which our computer equipment and the computer equipment of our third-party providers are protected against damage from fire, flood, earthquakes, power loss, telecommunications failures, break-ins, acts of war or terrorism and similar events. We have technology centers in the U.S. that contain a significant portion of our computer and electronic equipment. These technology centers host and manage our voice, video and data services. Despite precautions taken by us, a natural disaster or other unanticipated problem that impacts our locations could cause interruptions in the services that we provide. Such interruptions in our services could have a material adverse effect on our ability to provide services to our subscribers and, in turn, on our business, financial condition and results of operations.

**Network infrastructure.** The success of our business depends on the capacity, reliability and security of our network infrastructure. We may be required to expand and improve our infrastructure and/or purchase additional capacity from third-party providers to meet the needs of an increasing number of subscribers and to accommodate the expanding amount and type of information our customers communicate. Such expansion and improvement may require substantial financial, operational and managerial resources. We may not be able to expand or improve our network infrastructure to meet additional demand or changing subscriber requirements on a timely basis and at a commercially reasonable cost, or at all. As a result, users may be unable to use our services. Inaccessibility, interruptions or other limitations on the ability of customers to access our services due to excessive user demand, or any failure of our network to handle user traffic, could have a material adverse effect on our reputation, which could cause an increase in churn and would adversely impact our revenues.

**We and our technology partners may not be able to develop or protect our respective proprietary technologies and may be required to enter licensing arrangements on unfavorable terms.**

We regard our trademarks, service marks, copyrights, patents, trade secrets, proprietary technologies and similar intellectual property and those of our technology partners as critical to our success. We rely on trademark, copyright and patent law, trade secret protection, and confidentiality agreements with our employees, customers, partners and others to protect our proprietary rights and our technology partners employ similar practices. The efforts that both we and our technology partners have taken to protect our proprietary rights may not be sufficient or effective. Third parties may infringe or misappropriate either of our copyrights, trademarks, patents and similar proprietary rights. If either we or our technology partners are unable to protect our respective proprietary rights from unauthorized use, our respective brand images may be harmed and our business may suffer.

The protection of trademarks, service marks, copyrights, patents, trade secrets, proprietary technologies and intellectual property may require the expenditure of significant financial and managerial resources. Moreover, we cannot be certain that the steps we or our technology partners take to protect these assets will adequately protect our respective rights or that others will not independently develop or otherwise acquire equivalent or superior technology or other intellectual property rights. Such events could substantially diminish the value of our respective technology and property, which could adversely affect our business.

**We may be accused of infringing upon the intellectual property rights of third parties, which is costly to defend and could limit our ability to use certain technologies in the future.**

We may be subject to claims and legal proceedings regarding alleged infringement by us of the patents, trademarks, licenses and other intellectual property rights of third parties. Such claims, whether or not meritorious, may result in the expenditure of significant financial and managerial resources, injunctions against us or the imposition of damages that we must pay. We may need to obtain licenses from third parties who allege that we have infringed their rights, but such licenses may not be available on terms acceptable to us or at all. Any of these could result in increases in our operating expenses or could limit or reduce the number of our service offerings.

We may decide to initiate litigation in order to enforce our intellectual property rights, to protect our trade secrets, or to determine the validity and scope of our proprietary rights. Any such litigation could result in substantial expense, may reduce our profits, and may not adequately protect our intellectual property rights. In addition, we may be exposed to future litigation by third parties based on claims that our products or services infringe their intellectual property rights. Any such claim or litigation against us, whether or not successful, could result in substantial costs and harm our reputation. In addition, such claims or litigation could force us to do one or more of the following:

- cease selling or using any of our products that incorporate the challenged intellectual property, which would adversely affect our revenue;

obtain a license from and/or make royalty payments to the holder of the intellectual property right alleged to have been infringed, which license may not be available on reasonable terms, if at all;

- divert management's attention from our business;

- redesign or, in the case of trademark claims, rename our products or services to avoid infringing the intellectual property rights of third parties, which may not be possible and in any event could be costly and time-consuming.
- Even if we were to prevail, such claims or litigation could be time-consuming and expensive to prosecute or defend, and could result in the diversion of our management's time and attention. These expenses and diversion of managerial resources could have a material adverse effect on our business, prospects, financial condition, and results of operations.

**We may be unable to hire and retain sufficient qualified personnel, and the loss of any of our key executive officers could adversely affect us.**

We believe that our success will depend in large part on our ability to attract and retain highly skilled, knowledgeable, sophisticated and qualified managerial, professional and technical personnel. We have experienced significant competition in attracting and retaining personnel who possess the skills that we are seeking. As a result of this competition, we may experience a shortage of qualified personnel. In addition, the loss of any of our key executives could have a material adverse effect on us. Much of our success depends upon the ability of our President and Chief Executive Officer, Paul D. Hamm, to identify, hire and retain senior management, sales, marketing and personnel. The loss of Mr. Hamm or the failure to attract, integrate, motivate and retain additional key employees could adversely impact our business. We do not have key person insurance on the life of Mr. Hamm or any other executive officer or key employee.

**Government regulations could force us to change our business practices.**

Federal, state and local governments extensively regulate the cable industry and the circuit-switched phone services industry and may begin regulating the Internet services industry. We expect that legislative enactments, court actions and regulatory proceedings will continue to clarify and in some cases change the rights and obligations of cable companies and other entities under the Communications Act and other laws, possibly in ways that we have not foreseen. The results of these legislative, judicial and administrative actions may materially affect our business operations.

Changes in the regulatory environment regarding the Internet and the voice, video and data services that we provide could cause our revenues to decrease and/or our costs to increase. Currently, we are classified as a "telecommunications" provider, and therefore directly regulated by the state and the FCC. We operate our services throughout the U.S. Regulatory authorities at the state level may seek to regulate aspects of our activities as telecommunications services, including Internet access and voice services, such as VoIP. We are also subject to other regulations that govern businesses generally, such as regulations related to consumer protection.

The tax treatment of activities on or relating to the Internet is currently unsettled. A number of proposals have been made at the federal, state and local levels and by foreign governments that could impose taxes on the online sale of goods and services and other Internet activities. Future federal and state laws imposing taxes on the provision of goods and services over the Internet could make it substantially more expensive to operate our business.

**Declining levels of economic activity or fluctuations in the use of our services could negatively impact our subscriber growth rates and incremental revenue levels.**

Changes in general economic conditions that affect demand for our voice, video and data services could adversely affect our revenues. While the number of subscribers has been rising, the infrastructure may not expand fast enough to meet the increased levels of demand. If use of the voice, video and data services as a medium for commerce declines or grows at a slower rate than we anticipate, our revenues could be lower than expected and our business could be harmed.

**We may face risks as we expand our business into international markets.**

We currently may explore opportunities to offer our products in foreign markets. If so, we have limited experience in developing and marketing our services internationally, and we may not be able to successfully execute our business model in markets outside the United States. We may face a number of risks inherent in doing business in international markets, including the following:

- changing regulatory requirements;

- fluctuations in the exchange rate for the United States dollar;
  - the availability of export licenses;
  - potentially adverse tax consequences;
  - political and economic instability;
  - changes in diplomatic and trade relationships;
- difficulties in staffing and managing foreign operations, tariffs and other trade barriers;
  - complex foreign laws and treaties;
  - changing economic conditions;
- difficulty of collecting foreign account receivables;
- exposure to different legal standards, particularly with respect to intellectual property and distribution of products;

In addition, we would be subject to the Foreign Corrupt Practices Act, which prohibits us from making payments to government officials and others in order to influence the granting of contracts we may be seeking. Our non-U.S. competitors are not subject to this law and this may give them a competitive advantage over us.

To the extent that international operations represent a significant portion of our business in the future, our business could suffer if any of these risks occur.

**Failure to achieve and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business and stock price.**

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, beginning with our Annual Report on Form 10-KSB for the fiscal year ending December 31, 2006, we will be required to furnish a report by our management on our internal control over financial reporting. The internal control report must contain (i) a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting, (ii) a statement identifying the framework used by management to conduct the required evaluation of the effectiveness of our internal control over financial reporting, (iii) management's assessment of the effectiveness of our internal control over financial reporting as of the end of our most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective, and (iv) a statement that the Company's independent auditors have issued an attestation report on management's assessment of internal control over financial reporting.

In order to achieve compliance with Section 404 of the Act within the prescribed period, we will need to engage in a process to document and evaluate our internal control over financial reporting, which will be both costly and challenging. In this regard, management will need to dedicate internal resources, engage outside consultants and adopt a detailed work plan to (i) assess and document the adequacy of internal control over financial reporting, (ii) take steps to improve control processes where appropriate, (iii) validate through testing that controls are functioning as documented and (iv) implement a continuous reporting and improvement process for internal control over financial reporting. We can provide no assurance as to our, or our independent auditors', conclusions at December 31, 2006 with respect to the effectiveness of our internal control over financial reporting under Section 404 of the Act. There is a risk that neither we nor our independent auditors will be able to conclude at December 31, 2006 that our internal controls over financial reporting are effective as required by Section 404 of the Act.



During the course of our testing we may identify deficiencies which we may not be able to remediate in time to meet the deadline imposed by the Sarbanes-Oxley Act for compliance with the requirements of Section 404. In addition, if we fail to achieve and maintain the adequacy of our internal controls, as such standards are modified, supplemented or amended from time to time, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act. Moreover, effective internal controls, particularly those related to revenue recognition, are necessary for us to produce reliable financial reports and are important to helping prevent financial fraud. If we cannot provide reliable financial reports or prevent fraud, our business and operating results could be harmed, investors could lose confidence in our reported financial information, and the trading price of our stock could drop significantly.

## **RISKS RELATED TO OUR OUTSTANDING SECURITIES**

### **The sale of the shares of our common stock acquired in private placements could cause the price of our common stock to decline.**

The shares being registered on this prospectus were sold to or underlie derivative securities sold to the selling stockholders in a private placement that closed on February 22, 2005. In the private offering we issued a total of \$1,425,000 principal amount of 8% senior secured convertible notes due February 22, 2007. The financing further included warrants to purchase an aggregate of 1,597,529 shares of our common stock and two additional investment rights entitling the holders to purchase from us up to an additional \$2,850,000 of 8% senior secured convertible notes and warrants to purchase an aggregate of 3,195,058 shares of our common stock. As required under the terms of that transaction, we are required to file this registration statement with the United States Securities and Exchange Commission under which the selling stockholders may resell to the public common stock acquired upon the conversion of the notes, as well as common stock acquired upon the exercise of the warrants and other investment rights held by them.

The selling stockholders under this prospectus may sell none, some or all of the shares of common stock acquired from us, as well as common stock acquired upon the exercise of the warrants and investment rights held by them. We have no way of knowing whether the selling stockholders will sell the shares covered by the prospectus. Depending upon market liquidity at the time, a sale of shares covered by the registration statement at any given time could cause the trading price of our common stock to decline. The sale of a substantial number of shares of our common stock under this prospectus, or anticipation of such sales, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish to effect sales.

### **The large number of shares underlying the derivative securities we issued in our recent private placement may be available for future sale and the sale of these shares may depress the market price of our common stock.**

The issuance of common stock to the investors in our recent private placement upon the conversion or exercise of the derivative securities that they hold may cause downward pricing pressure and will dilute our stockholders' percentage of ownership. The convertible promissory notes sold in the offering are convertible at any time at the option of the holder into shares of our common stock at a conversion price of \$0.892 per share, which was 70% of the average closing market price of the common stock on the over-the-counter bulletin board for the 20 trading days prior to the closing of the transaction. In addition, the sale of the common stock issued upon the exercise of the related warrants and additional investment rights issued to the investors will also place downward pricing pressure on our common stock.

We also expect to pay 8% annual interest on the convertible promissory notes, payable semi-annually in cash or at our option (subject to the satisfaction of certain conditions) in shares of our common stock valued at 85% of the volume weighted average price of a common stock for the 20 trading days prior to the payment date. This will further dilute our stockholders ownership and put additional downward pricing pressure on the common stock.

### **The issuance of shares of our common stock upon conversion of the convertible notes and exercise of outstanding warrants may cause immediate and substantial dilution to our existing stockholders.**

The issuance of shares upon conversion of the convertible notes and exercise of warrants may result in substantial dilution to the interests of other stockholders since the selling stockholders may ultimately convert and sell the stock at a price lower than the current market prices. Although the selling stockholders may not convert their convertible notes and/or exercise their warrants if such conversion or exercise would cause them to beneficially own more than 4.99% of our outstanding common stock, this restriction does not prevent the selling stockholders from converting and/or exercising some of their holdings, selling the shares obtained and then converting the rest of their holdings. In this way, the selling stockholders could sell more than this limit while never holding more than this limit.



**We have increased the amount of our secured indebtedness as a result of our recent private placement of convertible secured promissory notes.**

All of our material assets have been pledged as collateral for the \$1,425,000 in principal amount of the convertible promissory notes that we sold in our recent private placement. In addition to the security interest in our assets, the promissory notes carry substantial covenants that impose significant requirements on us, including, among others, requirements that:

- we pay principal and other charges on the promissory notes when due and we pay interest semi-annually in arrears beginning June 30, 2005;
- we use the proceeds from the sale of the promissory notes only for permitted purposes;
- while the promissory notes are outstanding, if we issue equity or equity linked securities at a price lower than the conversion price then the conversion price of the promissory notes will be reduced to the same price. If we issue any variable priced equity securities or variable price equity linked securities, then the conversion price of the promissory notes will be reduced to the lowest issue price applied to those securities;
- we keep reserved out of our authorized shares of common stock sufficient shares to satisfy our obligation to issue shares on conversion of the promissory notes and the exercise of the related warrants and other investment rights issued in connection with the sale of the promissory notes;
- if we do not achieve revenues of at least \$4,000,000 for calendar year 2005, the conversion price of the promissory notes will be adjusted to 85% of the volume weighted average closing market price of the common stock on the over-the-counter bulletin board for the 20 trading days prior to the release of the calendar 2005 financial statements, but in no event higher than the initial conversion price of \$.892. The conversion price is also subject to adjustment upon the occurrence of certain specified events, including stock dividends and stock splits, pro rata distributions of equity securities, evidences of indebtedness, rights or warrants to purchase common stock or cash or any other asset, mergers or consolidations, or certain issuances of common stock at a price below the initial conversion price of \$.892 per share, subject to adjustment as set forth above;
- we file a registration statement with the SEC by April 25, 2005, registering the shares of common stock issuable upon the conversion of the promissory notes and the exercise of the related warrants. If we fail to file the registration statement on a timely basis, or if it is not declared effective by the SEC within a maximum of 120 days from the filing date, we are required to pay to the investors liquidated damages equal to 2.0% of the amount invested and shall pay to the investors liquidated damages equal to 1.0% of the amount invested for each subsequent 30-day period; and
- we shall not, directly or indirectly, (i) redeem, purchase or otherwise acquire any capital stock or set aside any monies for such a redemption, purchase or other acquisition or (ii) issue any floating price security with a floor price below the conversion price.

Our ability to comply with these provisions may be affected by changes in our business condition or results of our operations, or other events beyond our control. The breach of any of these covenants could result in a default under the promissory notes, permitting the holders of the promissory notes to accelerate their maturity and to sell the assets securing them. Such actions by the holders of the promissory notes could cause us to cease operations or seek bankruptcy protection.

**If we are required for any reason to repay the promissory notes, we would be required to deplete our working capital, if available, or raise additional funds. Our failure to repay the promissory notes, if required, could result in legal action against us, which could require the sale of substantial assets.**

The promissory notes are due and payable on February 22, 2007 unless sooner converted into shares of our common stock. In addition, any event of default as described in the promissory notes could require the early repayment of the notes including a default interest rate of 18% on the outstanding principal balance of the promissory notes if the default is not cured with the specified grace period. We anticipate that the full amount of the promissory notes, together with accrued interest will be converted into shares of our common stock, in accordance with the terms of the promissory note. If we are required to repay the promissory notes, we would be required to use our limited working capital and raise additional funds. If we were unable to repay the promissory notes when required, the promissory noteholders could commence legal action against us and foreclose on all of our assets to recover the amounts due. Any such action would require us to curtail or cease operations.

**There may be volatility in our stock price.**

The trading price of our common stock on the over-the-counter bulletin board has been and continues to be subject to wide fluctuations. The trading price of our common stock has closed as low as \$0.32 per share and as high as \$2.26 per share in the last twelve months. The market price of the common stock could be subject to significant fluctuations in response to various factors and events, including, among other things, the depth and liquidity of the trading market of the common stock, quarterly variations in actual or anticipated operating results, growth rates, changes in estimates by analysts, market conditions in the industry, announcements by competitors, regulatory actions and general economic conditions. In addition, the stock market from time to time experienced significant price and volume fluctuations, which may be unrelated to the operating performance of particular companies. As a result of the foregoing, our operating results and prospects from time to time may be below the expectations of public market analysts and investors. Any such event would likely result in a material adverse effect on the price of the common stock.

**We do not intend to pay cash dividends on our common stock in the foreseeable future.**

We currently anticipate that we will retain all future earnings, if any, to finance the growth and development of our business and do not anticipate paying cash dividends on our common stock in the foreseeable future. Any payment of cash dividends will depend upon our financial condition, capital requirements, earnings and other factors deemed relevant by our board of directors.

**Our common stock is subject to the “penny stock” rules of the SEC and the trading market in our securities is limited, which makes transactions in our stock cumbersome and may reduce the value of an investment in our stock.**

The Securities and Exchange Commission has adopted Rule 15c-9, which establishes the definition of a “penny stock,” for the purposes relevant to us, as any equity security that has a market price of less than \$5.00 per share or with an exercise price of less than \$5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, the rules require a broker or dealer to approve a person’s account for transactions in penny stocks and that the broker or dealer receive from the investor a written agreement to the transaction, setting forth the identity and quantity of the penny stock to be purchased.

In order to approve a person’s account for transactions in penny stocks, the broker or dealer must obtain financial information and investment experience objectives of the person and make a reasonable determination that the transactions in penny stocks are suitable for that person and that the person has sufficient knowledge and experience in financial matters to be capable of evaluating the risks of transactions in penny stocks.

The broker or dealer must also deliver, prior to any transaction in a penny stock, a disclosure schedule prescribed by the Commission relating to the penny stock market, which, in highlight form sets forth the basis on which the broker or dealer made the suitability determination and that the broker or dealer received a signed, written agreement from the investor prior to the transaction.

Generally, brokers may be less willing to execute transactions in securities subject to the “penny stock” rules. This may make it more difficult for investors to dispose of our common stock and cause a decline in the market value of our stock.

**If we fail to remain current on our reporting requirements, we could be removed from the over-the-counter bulletin board, which would limit the ability of broker-dealers to sell our securities and the ability of stockholders to sell their securities in the secondary market.**

Companies trading on the over-the-counter bulletin board, such as us, must be reporting issuers under Section 12 of the Securities Exchange Act of 1934, as amended, and must be current in their reports under Section 13 in order to maintain price quotation privileges on the over-the-counter bulletin board.

If we fail to remain current on our reporting requirements, we could be removed from the over-the-counter bulletin board. As a result, the market liquidity for our securities could be severely affected by limiting the ability of broker-dealers to sell our securities and the ability of stockholders to sell their securities in the secondary market

**Stock prices of technology companies have declined precipitously at times in the past and the trading price of our common stock is likely to be volatile, which could result in substantial losses to investors.**

The trading price of our common stock has fluctuated significantly in the past and could continue to be volatile in response to factors including the following, many of which are beyond our control:

- variations in our operating results;
- announcements of technological innovations or new services by us or our competitors;
- changes in expectations of our future financial performance, including financial estimates by securities analysts and investors;
  - our failure to meet analysts’ expectations;
- changes in operating and stock price performance of other technology companies similar to us;
  - conditions or trends in the technology industry;
  - additions or departures of key personnel; and
  - future sales of our common stock.

Domestic and international stock markets often experience significant price and volume fluctuations that are unrelated to the operating performance of companies with securities trading in those markets. These fluctuations, as well as political events, terrorist attacks, threatened or actual war, and general economic conditions unrelated to our performance, may adversely affect the price of our common stock. In the past, securities holders of other companies often have initiated securities class action litigation against those companies following periods of volatility in the market price of those companies’ securities. If the market price of our stock fluctuates and our stockholders initiate this type of litigation, we could incur substantial costs and experience a diversion of our management’s attention and resources, regardless of the outcome. This could materially and adversely affect our business, prospects, financial condition, and results of operations.

**Provisions in our corporate charter and under Delaware law are favorable to our directors.**

Pursuant to our certificate of incorporation, members of our management and board of directors will have no liability for violations of their fiduciary duty of care as officers and directors, except in limited circumstances. This means that you may be unable to prevail in a legal action against our officers or directors even if you believe they have breached their fiduciary duty of care. In addition, our certificate of incorporation allows us to indemnify our officers and directors from and against any and all expenses or liabilities arising from or in connection with their serving in such capacities with us. This means that if you were able to enforce an action against our directors or officers, in all likelihood we would be required to pay any expenses they incurred in defending the lawsuit and any judgment or settlement they otherwise would be required to pay.



**Certain provisions of Delaware General Corporation Law and in our charter, as well as our current stockholder base may prevent or delay a change of control of our company.**

Under the Delaware General Corporation Law, which we are subject to, it will be more difficult for a third party to take control of our company and may limit the price some investors are willing to pay for shares of our common stock. Furthermore, our certificate of incorporation authorizes the issuance of preferred stock without a vote or other stockholder approval. Finally, a majority of our outstanding common stock is held by insiders. Without a disparate stockholder base or a fluid aggregation of stockholders, it will be more difficult for a third-party to acquire our company without the consent of the insiders.

**RISKS RELATED TO THE INTERNET**

**We may not be able to adapt as the Internet market changes.**

Our failure to respond in a timely manner to changing market conditions or client requirements could have a material adverse effect on our business, prospects, financial condition, and results of operations. The Internet is characterized by:

- rapid technological change;
- changes in advertiser and user requirements and preferences;
- frequent new product and service introductions embodying new technologies; and
- the emergence of new industry standards and practices that could render our existing service offerings, technology, and hardware and software infrastructure obsolete.

In order to compete successfully in the future, we must

- enhance our existing services and develop new services and technology that address the increasingly sophisticated and varied needs of our prospective or current customers;
- license, develop or acquire technologies useful in our business on a timely basis; and
- respond to technological advances and emerging industry standards and practices on a cost-effective and timely basis.

**Our future success may depend on continued growth in the use of the Internet and Internet -based services.**

Because the Internet is a rapidly evolving industry, the ultimate demand and market acceptance for our services will be subject to a high level of uncertainty. Significant issues concerning the commercial use of the Internet and online service technologies, including security, reliability, cost, ease of use, and quality of service, remain unresolved and may inhibit the growth of Internet business solutions that use these technologies. In addition, the Internet or other online services could lose their viability due to delays in the development or adoption of new standards and protocols required to handle increased levels of Internet activity, or due to increased governmental regulation. Our business, prospects, financial condition, and results of operations would be materially and adversely affected if the use of the Internet and other online services does not continue to grow or grows more slowly than we expect.

**We may be required to keep pace with rapid technological change in the Internet industry.**

In order to remain competitive, we will be required continually to enhance and improve the functionality and features of our existing services, which could require us to invest significant capital. If our competitors introduce new products and services embodying new technologies, or if new industry standards and practices emerge, our existing services, technologies, and systems may become obsolete. We may not have the funds or technical know-how to upgrade our services, technology, and systems. If we face material delays in introducing new services, products, and enhancements, our customers may forego the use of our services and select those of our competitors, in which event our business, prospects, financial condition and results of operations could be materially and adversely affected.

**Regulation of the Internet and Internet-based services may adversely affect our business.**

Due to the increasing popularity and use of the Internet and online services, federal, state, local, and foreign governments may adopt laws and regulations, or amend existing laws and regulations, with respect to the Internet and other online services. These laws and regulations may affect issues such as user privacy, pricing, content, taxation, copyrights, distribution, and quality of products and services. The laws governing the Internet remain largely unsettled, even in areas where legislation has been enacted. It may take years to determine whether and how existing laws, such as those governing intellectual property, privacy, libel, and taxation, apply to the Internet. In addition, the growth and development of the market for electronic commerce may prompt calls for more stringent consumer protection laws, both in the United States and abroad, that may impose additional burdens on companies conducting business via the Internet. Any new legislation could hinder the growth in use of the Internet generally or in our industry and could impose additional burdens on companies conducting business online, which could, in turn, decrease the demand for our services, increase our cost of doing business, or otherwise have a material adverse effect on our business, prospects, financial condition, and results of operations.

**Our business could be negatively impacted if the security of the Internet becomes compromised.**

To the extent that our activities involve the storage and transmission of proprietary information about our customers, security breaches could damage our reputation and expose us to a risk of loss or litigation and possible liability. We may be required to expend significant capital and other resources to protect against security breaches or to minimize problems caused by security breaches. Our security measures may not prevent security breaches. Our failure to prevent these security breaches or a misappropriation of proprietary information may have a material adverse effect on our business, prospects, financial condition, and results of operations.

**Our technical systems could be vulnerable to online security risks, service interruptions or damage to our systems.**

Our systems and operations may be vulnerable to damage or interruption from fire, floods, power loss, telecommunications failures, break-ins, sabotage, computer viruses, penetration of our network by unauthorized computer users and “hackers,” natural disaster, and similar events. Preventing, alleviating, or eliminating computer viruses and other service-related or security problems may require interruptions, delays or cessation of service. We may need to expend significant resources protecting against the threat of security breaches or alleviating potential or actual service interruptions. The occurrence of such unanticipated problems or security breaches could cause material interruptions or delays in our business, loss of data, or misappropriation of proprietary or customer-related information or could render us unable to provide services to our customers for an indeterminate length of time. The occurrence of any or all of these events could materially and adversely affect our business, prospects, financial condition, and results of operations.

**If we are sued for content distributed through, or linked to by, our website or those of our customers, we may be required to spend substantial resources to defend ourselves and could be required to pay monetary damages.**

We aggregate and distribute third-party data and other content over the Internet. In addition, third-party websites are accessible through our website or those of our customers or affiliates. As a result, we could be subject to legal claims for defamation, negligence, intellectual property infringement, and product or service liability. Other claims may be based on errors or false or misleading information provided on or through our website or websites of our customers or affiliates. Other claims may be based on links to sexually explicit websites and sexually explicit advertisements. We may need to expend substantial resources to investigate and defend these claims, regardless of whether we successfully defend against them. In addition, implementing measures to reduce our exposure to this liability may require us to spend substantial resources and limit the attractiveness of our content to users.



**This prospectus may contain forward looking statements that may prove to be inaccurate.**

Information in this prospectus contains “forward-looking statements.” These forward-looking statements can be identified by the use of words such as “believes,” “estimates,” “could,” “possibly,” “probably,” “anticipates,” “projects,” “expects,” “may,” “will,” or “should” or other variations or similar words. No assurances can be given that the future results anti