

Edgar Filing: LIBERATE TECHNOLOGIES - Form 8-K

LIBERATE TECHNOLOGIES  
Form 8-K  
September 17, 2003

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K  
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

September 16, 2003

---

(Date of earliest event reported)

LIBERATE TECHNOLOGIES

---

(Exact name of Registrant as specified in its charter)

Delaware	000-26565	94-3245315
-----	-----	-----
(State of Incorporation)	(Commission File No.)	(IRS Employer Identification No.)

2 Circle Way, San Carlos, California 94070-6200

---

(Address of principal executive offices, including zip code)

(650) 701-4000

---

(Registrant's telephone number, including area code)

---

(Former name or former address, if changed since last report)

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

(c) Exhibits.

99.1 Press Release, dated September 16, 2003, issued by Liberate Technologies.

ITEM 12. RESULTS OF OPERATIONS AND FINANCIAL CONDITION

On September 16, 2003, Liberate Technologies issued a press release announcing fiscal year 2003 and restated fiscal year 2002 financial results. The text of the press release is furnished as Exhibit 99.1 to this Form 8-K.

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized.

LIBERATE TECHNOLOGIES

Edgar Filing: LIBERATE TECHNOLOGIES - Form 8-K

By: /s/ Kent Walker

---

Name: Kent Walker  
Title: Executive Vice President and  
General Counsel

Date: September 16, 2003

EXHIBIT INDEX

EXHIBIT NO. -----	DESCRIPTION -----
99.1	Press release, dated September 16, 2003, issued by Liberate Technologies.

[GRAPHIC LOGO OMITTED]

EXHIBIT 99.1

FOR IMMEDIATE RELEASE

Contacts:

Greg Wood  
Chief Financial Officer  
Liberate Technologies  
(650) 701-4080  
gwood@liberate.com

Kent Walker  
General Counsel  
Liberate Technologies  
(650) 701-4077  
kwalker@liberate.com

LIBERATE ANNOUNCES FY 2003 AND RESTATED FY 2002 FINANCIAL RESULTS

Company Purchases Supplemental Insurance For Shareholder Litigation;  
Announces Expected Sale of OSS Division

Conference Call September 16, 2003, at 2:00 p.m. Pacific Daylight Time

SAN CARLOS, Calif., September 16, 2003 -- Liberate Technologies (Pink Sheets: LBRT), a leading provider of software for digital cable systems, announced financial results for its 2003 fiscal year ended May 31, 2003 and completed its previously announced restatement of its 2002 fiscal year financial results. In addition, Liberate announced that it has purchased supplemental insurance for potential liability and defense costs related to the restatement and that it expects to enter into an agreement to sell its OSS division.

"We have restructured our company, completed the restatement of financial results, and put in place insurance for the pending shareholder litigation," said David Lockwood, Liberate's Chairman and CEO. "We are now executing on our business plan to establish Liberate as the leading provider of software for digital cable systems."

"Our software allows cable operators to run multiple services on multiple platforms," said Mr. Lockwood. "Based on industry standards, our software enables the delivery of a suite of integrated services, including High-Definition Television, Video on Demand, and Personal Video Recorders, to a range of set-top box platforms."

Fiscal 2003 Results

## Edgar Filing: LIBERATE TECHNOLOGIES - Form 8-K

Liberate's revenues for its 2003 fiscal year were \$27.7 million, compared to \$70.5 million for the prior fiscal year. The net loss was \$399.3 million, compared to \$335.1 million for the prior year.

Revenues fell during fiscal 2003 primarily due to a slowdown in deployments by European cable operators, reduced realization of deferred revenues from North American customers, and reduced service revenues. Liberate's deferred revenue balance decreased \$28.7 million in fiscal 2002 and \$10.4 million in fiscal 2003. Operating expenses declined for fiscal 2003 due to reduced staffing in the second half of the year, although these savings were partially offset by an increase in expenses related to the restatement.

As of May 31, 2003, Liberate had cash and short-term investments of \$261.7 million, plus an additional \$9.2 million held as security for office leases. Net operating loss carry-forwards available to offset future taxable income are approximately \$500 million, and will expire at various dates between 2005 and 2023.

### Restatement of Prior Period Results

Liberate also announced that its audit committee has completed its review of the company's prior period financial statements. As a result of that review, Liberate restated its financial statements for the second, third, and fourth quarters of its 2002 fiscal year, and revised its financial results for the first quarter of its 2003 fiscal year, which had been previously announced in a press release. The total revenue adjustment for these periods was \$10.8 million, of which \$6.8 million was deferred to later periods. Following the restatement and revision, total revenues for fiscal 2002 were \$70.5 million, rather than the originally reported \$80.3 million, and total revenues for the first quarter of fiscal 2003 were \$9.4 million before the effects of discontinued operations, rather than the originally announced \$10.3 million. The attached financial statements and Liberate's new and amended SEC reports filed today provide additional information regarding the restatement.

The principal reason for the restatement of revenues was the failure of certain employees to communicate material facts relating to commercial transactions to the employees responsible for revenue recognition.

As a result of the audit committee's investigation, Liberate has also made personnel changes and adopted additional policies designed to strengthen its internal controls and procedures.

### Purchase of Supplemental Insurance Policy

On August 29, 2003, Liberate purchased a \$100 million supplemental loss mitigation insurance policy from a AAA/A++ rated insurance carrier to cover liabilities that may arise from pending securities and derivative litigation related to Liberate's restatement. This policy is in addition to Liberate's existing policies that provide for up to \$15 million of coverage. Liberate paid a \$17.9 million premium for the loss mitigation policy, with a rebate of up to \$4.4 million if an eventual settlement or judgment is less than specified amounts.

### Expected Sale of OSS Division, previously known as Sigma Systems

Liberate expects in the near future to enter into a definitive agreement for the sale of its OSS division, previously known as Sigma Systems. Acquired by Liberate in August of last year, the OSS division provides software for the provisioning and management of high-speed data and telephony services over

## Edgar Filing: LIBERATE TECHNOLOGIES - Form 8-K

digital cable networks. The OSS division is based in Toronto, Ontario, employs approximately 100 professionals, and had net assets of approximately \$1.1 million as of May 31, 2003. Revenues for the OSS division following the acquisition were approximately \$2.3 million in Liberate's 2003 fiscal year. Following a sale of the OSS division and the completion of certain transitional assignments, Liberate expects to reach a target headcount of approximately 150 full-time professionals by the end of the current calendar year.

### Preliminary First Quarter 2004 Revenues

Liberate expects that its revenues for the first quarter of its 2004 fiscal year, ended August 31, 2003, will decline significantly from the revenues of \$6.6 million reported during the fourth quarter of 2003. This decrease in revenues reflects the difficult business climate for the cable sector, the lower realization of deferred revenues, and the classification of the OSS division as a discontinued operation.

### Changes to Liberate's Board of Directors

Christopher Bowick and Dana Evan have resigned from Liberate's board of directors, effective today. Liberate's board now consists of four independent directors (Charles Corfield, Patrick Jones, David Nagel, and Robert Walker) and one management director (David Lockwood).

"Chris and Dana have made important contributions to Liberate over the years. During the past months, they have played an important role as we completed the restatement and restructured the company," said Mr. Lockwood. "We thank them for their service as board members."

### Conference Call

Liberate has scheduled a conference call on September 16, 2003, at 2:00 p.m. Pacific Daylight Time. The call-in number is (212) 346-7479. A replay of the call will be available until Friday, September 26, 2003 on either (402) 977-9140 or (800) 633-8284, reservation code 21160815. The conference call can also be accessed via live webcast at Liberate's website ([www.liberate.com](http://www.liberate.com)) and will remain available for replay.

### About Liberate Technologies

Liberate Technologies is a leading provider of software for digital cable systems. Based on industry standards, Liberate's software enables cable operators to run multiple services -- including High-Definition Television, Video on Demand, and Personal Video Recorders -- on multiple platforms. Headquartered in San Carlos, California, Liberate has offices in Ontario, Canada, and the United Kingdom. Liberate and the Liberate design are registered trademarks of Liberate Technologies. Other product names used in association with these registered trademarks are trademarks of Liberate Technologies.

"Safe Harbor" Statement under the Private Securities Litigation Reform Act of 1995

Those statements above that involve expectations or intentions (such as those relating to future business or financial performance or anticipated corporate or commercial activities) are forward-looking statements, not guarantees of future performance. Actual results may vary materially due to the uncertain market for

## Edgar Filing: LIBERATE TECHNOLOGIES - Form 8-K

interactive television services, dependence on a limited number of cable network operators, business disruption resulting from Liberate's restatement and related litigation, necessary adjustments related to recent restructuring, and other risks outlined in Liberate's filings with the Securities and Exchange Commission (including its most recent reports on Forms 10-K and 10-Q).

### LIBERATE TECHNOLOGIES CONDENSED CONSOLIDATED BALANCE SHEETS (In thousands, except per share data)

	May 31,	
	2002 (As restated)	2003
<b>Assets</b>		
<b>Current assets:</b>		
Cash & cash equivalents	\$ 111,396	\$ 261,689
Short-term investments	106,228	-
Accounts receivable, net of allowance of doubtful accounts of \$550 and \$569, as of May 31, 2002 and 2003, respectively	12,975	4,881
Receivable from affiliate	174	-
Prepaid expenses and other current assets	6,979	3,866
Total current assets	237,752	270,436
Property and equipment, net	14,500	6,844
Goodwill and intangible assets, net	210,981	3,333
Long-term investments	183,409	-
Deferred costs	22,791	14,449
Restricted cash	9,199	9,249
Notes receivable from officers	1,618	-
Other	691	657
Total assets	\$ 680,941	\$ 304,968
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 2,641	\$ 2,228
Accrued liabilities	13,720	39,819
Accrued payroll and related expenses	5,073	1,761
Current portion of capital leases	296	6
Deferred revenues	25,471	15,072
Total current liabilities	47,201	58,886
Long-term capital leases, net of current portion	10	-
Long-term excess facilities charges	5,828	22,330
Other long-term liabilities	1,883	2,242
Total liabilities	54,922	83,458
Commitments and contingencies	-	-

Edgar Filing: LIBERATE TECHNOLOGIES - Form 8-K

Stockholders' equity:

Preferred stock, \$0.01 par value; Authorized - 20,000,000 shares; Outstanding - none as of May 31, 2002 and 2003	-	-
Common stock, \$0.01 par value; Authorized - 200,000,000 shares; Outstanding - 107,583,119 shares as of May 31, 2002 and 104,006,079 shares as of May 31, 2003	1,076	1,040
Contributed and paid in capital	1,497,596	1,490,125
Deferred stock-based compensation	(1,163)	(194)
Accumulated other comprehensive income	518	1,804
Accumulated deficit	(872,008)	(1,271,265)
	-----	-----
Total stockholders' equity	626,019	221,510
	-----	-----
Total liabilities and stockholders' equity	\$ 680,941	\$ 304,968
	=====	=====

LIBERATE TECHNOLOGIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(In thousands, except per share data)

	FY02		
	As Reported	Restatement Adjustments	As R
	-----		
Revenues:			
License and royalty	\$ 37,801	\$ (5,550)	\$
Service	42,522	(4,310)	
	-----		
Total revenues	80,323	(9,860)	
Cost of revenues:			
License and royalty	2,091	-	
Service	39,768	646	
	-----		
Total cost of revenues	41,859	646	
Gross margin	38,464	(10,506)	
Operating expenses:			
Research and development	44,809	(229)	
Sales and marketing	26,137	-	
General and administrative	12,484	-	
Goodwill and intangible asset impairment	-	-	
Excess facilities charges and related asset impairment	9,903	1	
Restructuring costs	3,075	-	
Amortization of deferred costs related to warrants	12,047	-	
Amortization of goodwill and intangible assets	220,741	1	2
Amortization of deferred stock-based compensation	1,670	(1)	
Write-off of acquired in-process research and development	-	-	
Warrant-related asset impairment	44,840	-	
	-----		
Total operating expenses	375,706	(228)	3

Edgar Filing: LIBERATE TECHNOLOGIES - Form 8-K

Loss from operations	(337,242)	(10,278)	(3)
Interest income	15,968	-	
Other expense, net	(2,799)	1	
Loss from continuing operations before income tax provision	(324,073)	(10,277)	(3)
Income tax provision	938	(201)	
Loss from continuing operations	(325,011)	(10,076)	(3)
Loss from discontinued operations	-	-	
Cumulative effect of a change in accounting principle	-	-	
Net loss	\$ (325,011)	\$ (10,076)	\$ (
Basic and diluted net loss per share:			
Continuing operations	\$ (3.06)	\$ (0.10)	\$
Discontinued operations	\$ -	\$ -	\$
Cumulative effect of change in accounting principle	\$ -	\$ -	\$
Basic and diluted net loss per share	\$ (3.06)	\$ (0.10)	\$
Shares used in computing basic and diluted net loss per share	106,144	-	

LIBERATE TECHNOLOGIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(In thousands)  
Unaudited  
Quarter ended

	August 31, 2002	Nov 30, 2002	Feb 28, 2003
Revenues:			
License and royalty	\$ 1,109	\$ 2,569	\$ 2,078
Service	8,111	3,751	3,501
Total revenues	9,220	6,320	5,579
Cost of revenues:			
License and royalty	432	421	257

Edgar Filing: LIBERATE TECHNOLOGIES - Form 8-K

Service	11,279	6,931	4,744
	-----	-----	-----
Total cost of revenues	11,711	7,352	5,001
Gross margin:			
Gross margin	(2,491)	(1,032)	578
Operating expenses:			
Research and development	8,677	10,612	7,494
Sales and marketing	5,877	6,252	4,345
General and administrative	3,711	5,461	5,945
Goodwill and intangible asset impairment	66	-	-
Excess facilities charges and related asset impairment	17,090	(587)	(127)
Restructuring costs	2,036	22	4,964
Amortization of deferred costs related to warrants	941	1,006	841
Amortization of goodwill and intangible assets	756	1,216	1,216
Amortization of deferred stock-based compensation	411	352	254
Write-off of acquired in-process research and development	300	-	-
	-----	-----	-----
Total operating expenses	39,865	24,334	24,932
	-----	-----	-----
Loss from operations	(42,356)	(25,366)	(24,354)
Interest income	2,502	2,001	1,442
Other income (expense), net	254	(7,150)	(2,727)
	-----	-----	-----
Loss from continuing operations before income tax provision	(39,600)	(30,515)	(25,639)
Income tax provision	398	407	238
	-----	-----	-----
Loss from continuing operations	(39,998)	(30,922)	(25,877)
Loss from discontinued operations	(25)	(690)	(206)
Cumulative effect of a change in accounting principle	(209,289)	-	-
	-----	-----	-----
Net loss	\$ (249,312)	\$ (31,612)	\$ (26,083)
	=====	=====	=====