

TIVO INC  
Form 8-K  
March 02, 2009

**UNITED STATES**  
**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**

Date of Report (Date of earliest event reported) March 2, 2009

**TIVO INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction

**000-27141**  
(Commission

**77-0463167**  
(IRS Employer

of incorporation)

File Number)

Identification No.)

**2160 Gold Street,**

**Alviso, California**  
(Address of principal executive offices)

**95002**  
(Zip Code)

Registrant's telephone number, including area code (408)519-9100

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**ITEM 8.01 OTHER EVENTS.**

On March 2, 2009, we announced financial results for our fourth quarter and fiscal year ended January 31, 2009. Net service revenues were \$44.1 million in the fourth quarter of fiscal year 2009, a decrease from the \$51.0 million in the same prior year period. Net technology revenues were \$4.4 million, which included recognition of Comcast development revenues of \$3.3 million. This was a decrease of 38%, compared with \$7.0 million in the fourth quarter of fiscal year 2008. The net loss for the quarter was (\$3.6) million or (\$0.04) per basic and diluted share, compared to a net loss of (\$6.4) million or (\$0.06) per basic and diluted share, for the quarter ended January 31, 2008.

As of January 31, 2009 our total subscriptions were approximately 3.3 million. TiVo-Owned subscription gross additions were 59,000 for the quarter, compared to 109,000 in the fourth quarter fiscal year 2008. TiVo-Owned net subscription losses were 4,000 compared to subscription net additions of 33,000 in the fourth quarter of fiscal year 2008. Our monthly churn rate decreased to 1.3% for the quarter ended January 31, 2009 as compared to 1.5% in the year ago period. The installed base of MSO/Broadcasters TiVo subscriptions has declined to approximately 1.7 million from 2.2 million a year ago.

**TIVO INC.****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

(In thousands, except per share and share amounts)

(unaudited)

	Three Months Ended January 31,		Twelve Months Ended January 31,	
	2009	2008	2009	2008
<b>Revenues</b>				
Service revenues	\$ 44,115	\$ 51,025	\$ 188,408	\$ 211,496
Technology revenues	4,353	7,027	20,126	19,382
Hardware revenues	10,712	16,066	41,133	41,798
<b>Net revenues</b>	<b>59,180</b>	<b>74,118</b>	<b>249,667</b>	<b>272,676</b>
<b>Cost of revenues</b>				
Cost of service revenues (1)	11,180	12,019	44,603	42,976
Cost of technology revenues (1)	2,740	5,252	12,300	17,367
Cost of hardware revenues	15,764	23,929	57,742	92,052
<b>Total cost of revenues</b>	<b>29,684</b>	<b>41,200</b>	<b>114,645</b>	<b>152,395</b>
<b>Gross margin</b>	<b>29,496</b>	<b>32,918</b>	<b>135,022</b>	<b>120,281</b>
<b>Research and development (1)</b>	<b>15,459</b>	<b>15,416</b>	<b>62,083</b>	<b>58,780</b>
<b>Sales and marketing (1)</b>	<b>6,517</b>	<b>7,336</b>	<b>24,944</b>	<b>23,987</b>
<b>Sales and marketing, subscription acquisition costs</b>	<b>1,690</b>	<b>7,195</b>	<b>6,038</b>	<b>31,050</b>
<b>General and administrative (1)</b>	<b>11,382</b>	<b>10,234</b>	<b>42,931</b>	<b>42,954</b>
<b>Litigation proceeds</b>			<b>(87,811)</b>	
<b>Total operating expenses</b>	<b>35,048</b>	<b>40,181</b>	<b>48,185</b>	<b>156,771</b>
<b>Income (loss) from operations</b>	<b>(5,552)</b>	<b>(7,263)</b>	<b>86,837</b>	<b>(36,490)</b>
<b>Interest income, includes \$16,789 related to litigation proceeds in the twelve months ended January 31, 2009</b>	<b>423</b>	<b>1,066</b>	<b>18,636</b>	<b>5,031</b>
<b>Interest expense and other</b>	<b>(278)</b>	<b>(183)</b>	<b>(553)</b>	<b>(102)</b>
<b>Income (loss) before income taxes</b>	<b>(5,407)</b>	<b>(6,380)</b>	<b>104,920</b>	<b>(31,561)</b>
<b>Provision for income taxes</b>	<b>1,840</b>	<b>(22)</b>	<b>(1,328)</b>	<b>(30)</b>

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Net income (loss)	\$ (3,567)	\$ (6,402)	\$ 103,592	\$ (31,591)
Net income (loss) per common share - basic	\$ (0.04)	\$ (0.06)	\$ 1.03	\$ (0.32)
Net income (loss) per common share - diluted	\$ (0.04)	\$ (0.06)	\$ 1.01	\$ (0.32)
Weighted average common shares used to calculate basic net income (loss) per share	101,303,123	98,517,991	100,389,980	97,510,576
Weighted average common shares used to calculate diluted net income (loss) per share	101,303,123	98,517,991	102,595,607	97,510,576

(1) Includes stock-based compensation expense as follows:

Cost of service revenues	\$ 229	\$ 216	\$ 903	\$ 729
Cost of technology revenues	477	729	2,071	2,422
Research and development	2,235	1,934	8,805	7,326
Sales and marketing	557	737	2,089	2,205
General and administrative	2,501	2,081	9,552	10,157

## TIVO INC.

## CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except share amounts)

(unaudited)

	January 31, 2009	January 31, 2008
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 162,337	\$ 78,812
Short-term investments	44,991	20,294
Accounts receivable, net of allowance for doubtful accounts of \$770 and \$1,194	14,283	20,019
Inventories	13,027	17,748
Prepaid expenses and other, current	4,896	3,792
Total current assets	239,534	140,665
<b>LONG-TERM ASSETS</b>		
Property and equipment, net	10,285	11,349
Purchased technology, capitalized software, and intangible assets, net	10,597	13,522
Prepaid expenses and other, long-term	1,268	1,513
Long-term investments	3,944	
Total long-term assets	26,094	26,384
Total assets	\$ 265,628	\$ 167,049
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
<b>LIABILITIES</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 9,844	\$ 23,615
Accrued liabilities	25,054	29,536
Deferred revenue, current	47,560	59,341
Total current liabilities	82,458	112,492
<b>LONG-TERM LIABILITIES</b>		
Deferred revenue, long-term	28,557	38,128
Deferred rent and other long-term liabilities	126	309
Total long-term liabilities	28,683	38,437
Total liabilities	111,141	150,929
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>STOCKHOLDERS EQUITY</b>		
Preferred stock, par value \$0.001:		
Authorized shares are 10,000,000; Issued and outstanding shares - none		
Common stock, par value \$0.001:		
Authorized shares are 275,000,000; Issued shares are 103,604,015 and 100,098,426, respectively, and outstanding shares are 103,370,523 and 99,970,947, respectively		
Additional paid-in capital	104	100
Accumulated deficit	829,273	792,654
Treasury stock, at cost - 233,492 shares and 127,479 shares, respectively	(672,196)	(775,788)
Unrealized loss on marketable securities	(1,659)	(846)
	(1,035)	

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Total stockholders' equity		154,487		16,120
Total liabilities and stockholders' equity		\$ 265,628		\$ 167,049

## TIVO INC.

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(unaudited)

	Twelve Months Ended January 31,	
	2009	2008
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income (loss)	\$ 103,592	\$ (31,591)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization of property and equipment and intangibles	9,783	10,326
Stock-based compensation expense	23,420	22,839
Inventory write-down		5,892
Loss on inventory barter transaction, utilization, and write-down of trade credits	638	1,331
Allowance for doubtful accounts	470	923
Changes in assets and liabilities:		
Accounts receivable	5,266	(301)
Inventories	4,721	3,566
Prepaid expenses and other	(1,497)	227
Accounts payable	(14,623)	(12,437)
Accrued liabilities	(4,530)	(9,358)
Deferred revenue	(21,352)	(22,254)
Deferred rent and other long-term liabilities	(183)	(1,253)
Net cash provided by (used in) operating activities	\$ 105,705	\$ (32,090)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchases of short-term and long-term investments	(49,976)	(30,808)
Sales of short-term investments	20,300	50,200
Acquisition of property and equipment	(4,549)	(7,422)
Acquisition of intangibles	(319)	(375)
Net cash provided by (used in) investing activities	\$ (34,544)	\$ 11,595
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds from issuance of common stock related to exercise of common stock options	9,240	7,107
Proceeds from issuance of common stock related to employee stock purchase plan	3,963	3,397
Treasury Stock - repurchase of stock for tax withholding	(813)	(276)
Payment under capital lease obligation	(26)	
Net cash provided by financing activities	\$ 12,364	\$ 10,228
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>\$ 83,525</b>	<b>\$ (10,267)</b>
<b>CASH AND CASH EQUIVALENTS:</b>		
Balance at beginning of period	78,812	89,079
Balance at end of period	\$ 162,337	\$ 78,812

## TIVO INC.

## OTHER DATA

Subscriptions

(Subscriptions in thousands)	Three Months Ended January 31,		Twelve Months Ended January 31,	
	2009	2008	2009	2008
<b>TiVo-Owned Subscription Gross Additions</b>	<b>59</b>	<b>109</b>	<b>187</b>	<b>276</b>
<b>Subscription Net Additions/(Losses):</b>				
TiVo-Owned	(4)	33	(91)	19
MSOs/Broadcasters	(121)	(155)	(520)	(518)
<b>Total Subscription Net Additions/(Losses)</b>	<b>(125)</b>	<b>(122)</b>	<b>(611)</b>	<b>(499)</b>
<b>Cumulative Subscriptions:</b>				
TiVo-Owned	1,654	1,745	1,654	1,745
MSOs/Broadcasters	1,681	2,201	1,681	2,201
<b>Total Cumulative Subscriptions</b>	<b>3,335</b>	<b>3,946</b>	<b>3,335</b>	<b>3,946</b>
<b>% of TiVo-Owned Cumulative Subscriptions paying recurring fees</b>	<b>59%</b>	<b>61%</b>	<b>59%</b>	<b>61%</b>

Included in the 1,654,000 TiVo-Owned subscriptions are approximately 225,000 lifetime subscriptions that have reached the end of the period TiVo uses to recognize lifetime subscription revenue. These lifetime subscriptions no longer generate subscription revenue.

**Subscriptions.** Management reviews this metric, and believes it may be useful to investors, in order to evaluate our relative position in the marketplace and to forecast future potential service revenues. The TiVo-Owned lines refer to subscriptions sold directly or indirectly by TiVo to consumers who have TiVo-enabled DVRs and for which TiVo incurs acquisition costs. The MSOs/Broadcasters lines refer to subscriptions sold to consumers by MSOs/Broadcasters such as DIRECTV, Cablevision Mexico, Seven (Australia), and Comcast for which TiVo expects to incur little or no acquisition costs. Additionally, we provide a breakdown of the percent of TiVo-Owned subscriptions for which consumers pay recurring fees, including on a monthly and a prepaid one, two, or three year basis, as opposed to a one-time prepaid product lifetime fee.

We define a subscription as a contract referencing a TiVo-enabled DVR for which (i) a consumer has committed to pay for the TiVo service and (ii) service is not canceled. We count product lifetime subscriptions in our subscription base until both of the following conditions are met: (i) the period we use to recognize product lifetime subscription revenues ends; and (ii) the related DVR has not made contact to the TiVo service within the prior six month period. Product lifetime subscriptions past this period which have not called into the TiVo service for six months are not counted in this total. Effective November 1, 2008, we extended the period we use to recognize product lifetime subscription revenues from 54 months to 60 months for all product lifetime subscriptions acquired on or before October 31, 2007. We now amortize all product lifetime subscriptions over a 60 month period. We are not aware of any uniform standards for defining subscriptions and caution that our presentation may not be consistent with that of other companies. Additionally, the subscription fees that some of our MSOs/Broadcasters pay us may be based upon a specific contractual definition of a subscriber or subscription which may not be consistent with how we define a subscription for our reporting purposes.

## TIVO INC.

## OTHER DATA - KEY BUSINESS METRICS

	Three Months Ended January 31,		Twelve Months Ended January 31,	
	2009	2008	2009	2008
	(In thousands, except churn rate per month)			
<b>TiVo-Owned Churn Rate</b>				
Average TiVo-Owned subscriptions	1,656	1,727	1,695	1,721
TiVo-Owned subscription cancellations	(63)	(76)	(278)	(257)
<b>TiVo-Owned Churn Rate per month</b>	<b>-1.3%</b>	<b>-1.5%</b>	<b>-1.4%</b>	<b>-1.2%</b>





**TiVo-Owned Churn Rate per Month.** Management reviews this metric, and believes it may be useful to investors, in order to evaluate our ability to retain existing TiVo-Owned subscriptions (including both monthly and product lifetime subscriptions) by providing services that are competitive in the market. Management believes factors such as service enhancements, service commitments, higher customer satisfaction, and improved customer support may improve this metric. Conversely, management believes factors such as increased competition, lack of competitive service features such as high definition television recording capabilities in our lowest cost product offerings, and increased price sensitivity may cause our TiVo-Owned Churn Rate per month to increase.

We define the TiVo-Owned Churn Rate per month as the total TiVo-Owned subscription cancellations in the period divided by the Average TiVo-Owned subscriptions for the period (including both monthly and product lifetime subscriptions), which then is divided by the number of months in the period. We calculate Average TiVo-Owned subscriptions for the period by adding the average TiVo-Owned subscriptions for each month and dividing by the number of months in the period. We calculate the average TiVo-Owned subscriptions for each month by adding the beginning and ending subscriptions for the month and dividing by two. We are not aware of any uniform standards for calculating churn and caution that our presentation may not be consistent with that of other companies.

	Three Months Ended January 31, 2009	Three Months Ended January 31, 2008	Twelve Months Ended January 31, 2009	Twelve Months Ended January 31, 2008
	(In thousands, except SAC)			
<b>Subscription Acquisition Costs</b>				
Sales and marketing, subscription acquisition costs	\$ 1,690	\$ 7,195	\$ 6,038	\$ 31,050
Hardware revenues	(10,712)	(16,066)	(41,133)	(41,798)
Less: MSOs/Broadcasters-related hardware revenues	362		9,333	
Cost of hardware revenues	15,764	23,929	57,742	92,052
Less: MSOs/Broadcasters-related cost of hardware revenues	(385)		(8,590)	
<b>Total Acquisition Costs</b>	6,719	15,058	23,390	81,304
<b>TiVo-Owned Subscription Gross Additions</b>	59	109	187	276
<b>Subscription Acquisition Costs (SAC)</b>	\$ 114	\$ 138	\$ 125	\$ 295

**Subscription Acquisition Cost or SAC.** Management reviews this metric, and believes it may be useful to investors, in order to evaluate trends in the efficiency of our marketing programs and subscription acquisition strategies. We define SAC as our total TiVo-Owned acquisition costs for a given period divided by TiVo-Owned subscription gross additions for the same period. We define total acquisition costs as sales and marketing, subscription acquisition costs less net TiVo-Owned related hardware revenues (defined as TiVo-Owned related gross hardware revenues less rebates, revenue share and market development funds paid to retailers) plus TiVo-Owned related cost of hardware revenues. The sales and marketing, subscription acquisition costs line item includes advertising expenses and promotion-related expenses directly related to subscription acquisition activities, but does not include expenses related to advertising sales. We do not include third parties subscription gross additions, such as MSOs/Broadcasters gross additions with TiVo subscriptions, in our calculation of SAC because we typically incur limited or no acquisition costs for these new subscriptions, and so we also do not include MSOs/Broadcasters sales and marketing, subscription acquisition costs, hardware revenues, or cost of hardware revenues in our calculation of TiVo-Owned SAC. We are not aware of any uniform standards for calculating total acquisition costs or SAC and caution that our presentation may not be consistent with that of other companies.

TiVo-Owned Average Revenue per Subscription	Three Months Ended January 31, 2009		Twelve Months Ended January 31, 2008	
	2009	2008	2009	2008
	(In thousands, except ARPU)			
Total Service revenues	\$ 44,115	\$ 51,025	\$ 188,408	\$ 211,496
Less: MSOs/Broadcasters-related service revenues	(5,137)	(7,133)	(22,412)	(27,440)
TiVo-Owned-related service revenues	38,978	43,892	165,996	184,056
Average TiVo-Owned revenues per month	12,993	14,631	13,833	15,338
Average TiVo-Owned per month subscriptions	1,656	1,727	1,695	1,721
TiVo-Owned ARPU per month	\$ 7.85	\$ 8.47	\$ 8.16	\$ 8.91

MSOs/Broadcasters Average Revenue per Subscription	Three Months Ended January 31, 2009		Twelve Months Ended January 31, 2008	
	2009	2008	2009	2008
	(In thousands, except ARPU)			
Total Service revenues	\$ 44,115	\$ 51,025	\$ 188,408	\$ 211,496
Less: TiVo-Owned-related service revenues	(38,978)	(43,892)	(165,996)	(184,056)
MSOs/Broadcasters-related service revenues	5,137	7,133	22,412	27,440
Average MSOs/Broadcasters revenues per month	1,712	2,378	1,868	2,287
Average MSOs/Broadcasters per month subscriptions	1,743	2,279	1,939	2,481
MSOs/Broadcasters ARPU per month	\$ 0.98	\$ 1.04	\$ 0.96	\$ 0.92

**Average Revenue Per Subscription or ARPU.** Management reviews this metric, and believes it may be useful to investors, in order to evaluate the potential of our subscription base to generate revenues from a variety of sources, including subscription fees, advertising, and audience research measurement. ARPU does not include rebates, revenue share, and other payments to channel that reduce our GAAP revenues. As a result, you should not use ARPU as a substitute for measures of financial performance calculated in accordance with GAAP. Management believes it is useful to consider this metric excluding the costs associated with rebates, revenue share, and other payments to channel because of the discretionary and varying nature of these expenses and because management believes these expenses, which are included in hardware revenues, net, are more appropriately monitored as part of SAC. We are not aware of any uniform standards for calculating ARPU and caution that our presentation may not be consistent with that of other companies.

We calculate ARPU per month for TiVo-Owned subscriptions by subtracting MSOs/Broadcaster-related service revenues (which includes MSOs/Broadcasters subscription service revenues and MSOs/Broadcasters -related advertising revenues) from our total reported net service revenues and dividing the result by the number of months in the period. We then divide by Average TiVo-Owned subscriptions for the period, calculated as described above for churn rate. The above table shows this calculation.

We calculate ARPU per month for MSOs/Broadcasters subscriptions by first subtracting TiVo-Owned-related service revenues (which includes TiVo-Owned subscription service revenues and TiVo-Owned related advertising revenues) from our total reported service revenues. Then we divide average revenues per month for MSOs/Broadcasters -related service revenues by the average MSOs/Broadcasters subscriptions for the period.

Beginning in February 2006, TiVo began deferring a portion of the DIRECTV subscription fees equal to the fair value of the undelivered development services. Additionally, beginning in February 2007, DIRECTV began paying us a monthly fee for all DIRECTV households with DIRECTV receivers with TiVo service similar to the lower amount paid by DIRECTV for households with DIRECTV receivers with TiVo service deployed since March 15, 2002, subject to a monthly minimum payment by DIRECTV.

**Forward-Looking Statements**

This release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements relate to, among other things, TiVo's future business and growth strategies including TiVo's mass distribution strategy, profitability and financial guidance, distribution of the TiVo service domestically with Comcast and DIRECTV as well as internationally, future initiatives with SeaChange and Alticast, growth and innovation in TiVo's advertising and audience research measurement business, the timing and availability of broadband content, the results of TiVo's litigation with EchoStar, how TiVo intends to exploit its intellectual property, TiVo's future marketing spend and related activities, and financial performance. Forward-looking statements generally can be identified by the use of forward-looking terminology such as, believe, expect, may, will, intend, estimate, continue, or similar expressions or the negative of those terms or expressions. Such statements involve risks and uncertainties, which could cause actual results to vary materially from those expressed in or indicated by the forward-looking statements. Factors that may cause actual results to differ materially include delays in development, competitive service offerings and lack of market acceptance, as well as the other potential factors described under "Risk Factors" in the Company's public reports filed with the Securities and Exchange Commission, including the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2008, our Quarterly Reports on Form 10-Q for the fiscal periods ended April 30, 2008, July 31, 2008, and October 31, 2008 and our Current Reports on Form 8-K. The Company cautions you not to place undue reliance on forward-looking statements, which reflect an analysis only and speak only as of the date hereof. TiVo disclaims any obligation to update these forward-looking statements.

**SIGNATURES**

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 hereunto duly authorized.

TIVO INC.

Date: March 2, 2009

By: /s/ Anna Brunelle  
Anna Brunelle  
Chief Financial Officer  
(Principal Financial and Accounting Officer)