

TIVO INC  
Form 10-K  
April 03, 2009  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D. C. 20549**

**FORM 10-K**

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended January 31, 2009

.. **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

Commission file number 000-27141

**TIVO INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**77-0463167**  
(IRS Employer  
Identification No.)

**2160 Gold Street, PO Box 2160, Alviso, CA**  
(Address of principal executive offices)

**95002**  
(Zip Code)

**(408) 519-9100**

(Registrant's telephone number including area code)

Securities registered pursuant to Section 12(b) of the Act:

NONE

Securities registered pursuant to Section 12(g) of the Act:

COMMON STOCK, \$.001 PAR VALUE PER SHARE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "accelerated filer", "large accelerated filer", and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2). Yes  No

The aggregate market value of the registrant's common stock, \$0.0001 par value per share, held by non-affiliates of the registrant on July 31, 2008, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$621.4 million (based on the closing sales price of the registrant's common stock on that date as reported in the Nasdaq Global Market). Shares of the registrant's common stock held by each officer and director and each person known to the registrant to own 10% or more of the outstanding voting power of the registrant have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not a determination for other purposes.

On March 23, 2009, the Registrant had 103,814,135 outstanding shares of common stock.

**DOCUMENTS INCORPORATED BY REFERENCE**

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Part III incorporates by reference certain information from the registrant's definitive proxy statement (the Proxy Statement) for the 2009 Annual Meeting of Shareholders to be filed on or before May 31, 2009.

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**FOR THE FISCAL YEAR ENDED JANUARY 31, 2009**

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**CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This annual report on Form 10-K contains certain forward-looking statements within the meaning of section 27A of the Securities Act of 1933, as amended, and section 21E of the Securities Exchange Act of 1934, as amended. These statements relate to, among other things:

our future investments in subscription acquisition activities, offers of bundled hardware and service subscriptions, advertising expenditures, future use of consumer rebates, hardware subsidies, and other marketing activities and their impact on our total acquisition costs;

our future earnings including expected future service and technology revenues and future TiVo-Owned and MSOs/Broadcasters average revenue per subscription;

expectations of the growth in the future DVR market generally, and the high definition market specifically;

expectations of the growth of the TiVo service and technology outside the United States;

our financial results, expected future cost savings from our recent reduction in headcount on November 18, 2008, expectations of future revenues and profitability, and expectations for the future use of advertising trade credits;

our expectations with respect to the possible future outcomes and the possible receipt of additional damages in our on-going litigation with EchoStar;

our expectations with respect to the timing of further rollout of the TiVo service on Comcast, the launch of the TiVo service on Cox and the launch of the HD DIRECTV DVR with TiVo service;

possible future increases in our general and administrative expenses, including expenditures related to lawsuits involving us;

possible future increases in our operating expenses, including increases in customer support and retention expenditures;

future subscription growth or attrition of both TiVo-Owned and MSOs/Broadcasters (such as Comcast, Cox, DIRECTV, Seven (Australia and in the future New Zealand), and Cablevision (Mexico)) subscriptions;

expectation of future technology and service revenues from MSOs/Broadcasters, such as Comcast, Cox, DIRECTV, Seven (Australia and in the future New Zealand), and Cablevision (Mexico) and deployment of the TiVo service by them;

our estimates of the useful life of TiVo-enabled DVRs in connection with the recognition of revenue received from product lifetime subscriptions;

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expectations regarding the seasonality of our business and subscription additions to the TiVo service;

our intentions to continue to grow the number of TiVo-Owned subscriptions through our relationships with major retailers;

our estimates and expectations related to inventory and inventory-related write-downs and our possible utilization of such inventory reserves in the future;

our expectations related to future increases in advertising and audience research measurement revenues;

our expectations related to changes in the cost of our hardware revenues and the reasons for changes in the volume of DVRs sold to retailers;

our ability to fund operations, capital expenditures, and working capital needs during the next year;

our ability to raise additional capital through the financial markets in the future;

our ability to perform or comply with laws, regulations, and requirements different than those in the United States;

our estimates and expectations related to investments in auction rate securities and their associated carrying value;

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our ability to oversee our outsourcing of manufacturing processes and engineering work, and management of our inventory; and

the impact of transition to digital distribution technologies by both broadcasters and cable operators.

Forward-looking statements generally can be identified by the use of forward-looking terminology such as believe, expect, may, will, intend, estimate, continue, ongoing, predict, potential, and anticipate or similar expressions or the negative of those terms or expressions. These statements involve known and unknown risks, uncertainties and other factors, which may cause our actual results, performance or achievements to differ materially from those expressed or implied by such forward-looking statements. Such factors include, among others, the information contained under the caption Part I, Item 1A, Risk Factors in this annual report. The reader is cautioned not to place undue reliance on these forward-looking statements, which reflect management's analysis only as of the date of this annual report and we undertake no obligation to publicly update or revise any forward-looking statements in this annual report. The reader is strongly urged to read the information set forth under the caption Part I, Item 1, Business, Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, and Part I, Item 1A, Risk Factors for a more detailed description of these significant risks and uncertainties.

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TiVo is a leading provider of technology and services for digital video recorders (DVRs). The subscription-based TiVo® service redefines home entertainment by providing consumers with an easy way to record, watch, and control live television and receive thousands of movies and television shows from cable, broadcast, and broadband sources, as well as other forms of content from broadband sources, such as YouTube™ videos, and a vast collection of music videos and songs, and internet radio. TiVo offers such features as Season Pass® recordings, WishList® searches, TiVoToGo transfers, TiVoCast content (which includes premium content delivered from Amazon Video on Demand, Netflix, and others and in the future Blockbuster), TiVo KidZone, TiVo Online Scheduling, and TiVo Search. As of January 31, 2009, there were approximately 3.3 million subscriptions to the TiVo service. We distribute the TiVo DVR through consumer electronics retailers and through our on-line store at TiVo.com. Additionally, we provide the TiVo service through agreements with leading television service providers such as cable television operators, such as Comcast, and in the future Cox, and satellite television providers, including DIRECTV, as well as international cable and broadcasting companies such as Seven Networks (Australia and in the future New Zealand) and Cablevision Mexico. We also provide innovative advertising solutions for the television industry, including a unique platform for advertisers and audience research measurement.

We currently receive revenues from three main sources:

Consumers. Our primary source of revenues is from consumers, who subscribe directly to the TiVo service and typically pay us monthly fees of up to \$12.95 per month. We also offer consumers the option to prepay for one or three years of TiVo service at prices ranging from \$129 to \$299, or purchase a product lifetime subscription for \$399 (\$299 for existing customers who have at least one other qualifying subscription). We sell to consumers in part through distribution relationships with major retailers, and direct through our on-line store at TiVo.com.

Television service providers. We also work with satellite and cable television providers, including DIRECTV, Comcast, Cablevision Mexico, and in the future Cox, who pay us recurring monthly fees in order to provide the TiVo service to their subscribers. We receive fees for licensing and professional services from these and other customers as well.

Advertisers. We work directly with television advertisers, agencies, and networks to offer a variety of solutions for the television advertising market. These include short- and long-form interactive video advertising, audience research measurement, lead generation, and commerce. Some of our key clients include advertisers and advertising agencies such as Grey SF, Toyota Motors, Warner Brothers, Universal McCann, OMD, MediaEdge, Mediastorm, IdeaCity, Fox Corp, and the Procter & Gamble Company. We continue to be subject to a number of risks, including delays in product and service developments; competitive service offerings; lack of market acceptance; uncertainty of future profitability; dependence on third parties for manufacturing, marketing, and sales support, rollout schedules, software development issues; access to television programming; intellectual property claims against us; and our ability to sustain and grow our subscription base. We conduct our operations through one reportable segment. We anticipate that our business will continue to be seasonal and expect to generate a significant number of our annual new TiVo-Owned subscriptions during and immediately after the holiday shopping season. Prior to the fiscal year ended January 31, 2009, we incurred significant losses and had substantial negative operating cash flow. During the fiscal year ended January 31, 2009, our cash provided by our operations was \$105.7 million and we had a net income of \$103.6 million primarily due to receipts of damages and associated interest from our litigation against EchoStar. As of January 31, 2009, we had an accumulated deficit of (\$672.2) million.

**Industry Trends**

Consumer Demand is Driving Widespread Adoption of DVR Technology. We believe DVRs offer a compelling value proposition to consumers by providing the means to effectively sort through, select from, and organize the growing volume of broadcast, cable, and broadband video content choices including television shows, movies, videos, songs, and photos. DVR technology also gives consumers the ability to easily



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fast forward, pause, and rewind recorded video content. Today, approximately 29 million households have DVRs, up from approximately 22 million a year earlier and this is expected to increase to over 57 million by 2012 according to SNL Kagan and higher by other accounts.

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**Television Distributors See DVR Technology as a Competitive Asset.** Nearly all of the major television distributors in the United States including Comcast, DIRECTV, Dish (formerly EchoStar), Time-Warner Cable, and others, are offering DVR technology to their customers. These companies have indicated they consider DVR technology a competitive tool to help differentiate their services by offering their customers more programming features. These operators are looking for ways to more effectively attract and retain consumers to their own offerings and we believe that our unique user interface and software can help increase customer satisfaction and reduce churn for television distributors in the United States and beyond. This is also a risk to our business to the extent that these companies view TiVo as a competitive threat and economically harmful rather than a potential business partner.

**DVR is Expanding Beyond the United States.** Major television distributors and broadcasters outside of the United States are beginning to offer DVRs to their customers. These companies are looking for ways to integrate television, DVR technology, and the ability to retrieve broadband content into one device. Today, there have been approximately 44.6 million DVRs shipped globally and this number is expected to grow significantly according to eMarketer.

**DVR is Changing the Television Advertising Industry.** The proliferation of DVRs, and their ability to easily fast forward through television content, is requiring television advertisers to evaluate new and different ways to reach out to consumers. The DVR in general and the TiVo service specifically have given viewers the freedom to view video content when they want to view the content. Time shifting has made it more difficult for advertisers to be guaranteed that their commercials will be viewed by audiences at the regularly scheduled time the program is aired by network or local television stations. DVRs allow viewers the freedom to fast forward through all or a portion of commercial advertising incorporated into television and other programs, which means that advertisers are not assured that their commercials will be viewed at all. TiVo offers other programming options, such as video delivered by broadband, which may result in further audience fragmentation.

**Broadband Video is Increasing Television Viewing Options.** The growth in broadband video is providing television consumers with significantly more video options. These increased viewing options are providing television consumers with more access to different forms of video content from providers other than traditional cable and satellite television program packages. We expect DVR technology to be integral in providing television consumers with the ability to access, organize, and view television from both broadband and traditional television sources.

## **Our Solution**

We have created a unique set of technologies, products, and services that meet the needs of consumers, television distributors, and the advertising community. Our goal is to change the way consumers receive and watch television, broadband video, and advertising and to generate revenues through the deployment of our branded entertainment services and technology to television viewing households worldwide.

**Compelling, Easy-to-Use Consumer DVR Offering.** The TiVo service, combined with a TiVo-enabled DVR, has an easy, intuitive user interface and many features that we believe dramatically improve a consumer's television viewing experience. Depending on the model, TiVo-enabled DVRs can support analog cable, digital cable, satellite, over-the-air broadcast television, and streaming and downloaded broadband video content, including standard definition and high definition television. The TiVo service enables consumers to watch TV on their own schedule by automatically finding and digitally recording their favorite shows, all season long, even if the schedule changes, and can even skip reruns. The TiVo service allows consumers to find new shows to watch through features that enable them to search for shows to record by subject, title, genre, actor, director, or channel. The TiVo service can also suggest shows consumers may like based on shows they are recording. Consumers can also pause and rewind live and recorded television. Unlike with a VCR, consumers can play back a show from its beginning while it is in the middle of being recorded, and consumers can play back a previously recorded show while recording another show.

**Increasingly Differentiated Features and Service.** Our goal is to lead the market with innovations that expand the value and potential of our subscription service. We plan to continue to invest in innovation to improve consumer choice, convenience, and control over their home entertainment and to make the TiVo service more compelling for both current and potential customers. For example, we launched a service feature called TiVo Swivel Search, which allows TiVo users to discover content based on common actors, directors or genres of television shows and movies, and updated the feature in fiscal year 2009 to include additional content, including HD content. We provide consumers with access to new interactive applications which include the ability to receive more content delivered to their TiVo-enabled DVRs over a broadband connection such as premium film and television content from Amazon Video On Demand, Netflix, and in the future Blockbuster, and professionally produced program content from providers such as The New York Times, CNET, and the NBA, as well as millions of songs through music subscription service Rhapsody. We expect that a significant portion of our future product development efforts will be focused on broadband functionality as we believe that

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this area will bring the most significant enhancements to the TiVo service in the areas of mobility, entertainment personalization, and broadcast/broadband integration. We also offer a set of unique features to service providers deploying the TiVo service, to help them maximize the value of their service offerings to their subscribers. These market-leading features include powerful search and discovery capabilities that integrate not only regular linear television content but also Video On Demand content, including innovative means of highlighting HD content throughout the user interface. The TiVo application can be downloaded directly to certain existing cable operators' set-top boxes without the need for new hardware or a service call.

**Integrate Our Technology.** Part of our strategy focuses on creating, developing, and deploying a software version of the TiVo service that will be executable on certain third-party DVR platforms in order to promote the mass deployment of devices capable of running the TiVo service. The current focus of this effort is primarily on cable television providers, which are deploying DVR's in increasing numbers. We have announced partnerships with Comcast and Cox to deploy a software version of the TiVo service to run on DVR hardware manufactured by a variety of set-top box manufacturers. During fiscal year 2009, the TiVo service on Comcast launched in additional New England markets and based on Comcast's public statements, we expect further Comcast markets to deploy the TiVo service in fiscal year 2010. Cox is currently in trials in New England and we expect to begin initial deployment of their TiVo-enabled DVR solution during our fiscal year 2010. We also announced an extension of our DIRECTV partnership. Under the terms of this non-exclusive arrangement, we expect to develop a version of the TiVo service for DIRECTV's broadband-enabled HD DVR for a launch to consumers as soon as possible in calendar year 2010.

**Extend and Protect Our Intellectual Property.** The convenience, control, and ease of use of the TiVo service is derived largely from the technology we have developed. We intend to continue to design, develop, and implement innovative technological solutions that leverage and enhance the TiVo service offering. We have adopted a proactive patent and trademark strategy designed to protect and extend our technology and intellectual property.

**Extend TiVo Product Beyond U.S. Market.** We believe there is a large opportunity to leverage the TiVo service and technology outside the United States. For example, we have a distribution agreement with Cablevision Mexico, which is owned by Televisa, to provide a Spanish-language version of the TiVo service to digital cable subscribers in Mexico City, and Hybrid Television Services, a 100% subsidiary of Seven Networks in Australia, which is selling a DVB-T version of TiVo, and LiTV in Taiwan who is selling a broadband bundled cable offering through its TGC Taiwan subsidiary. We currently have solutions that integrate broadband offerings for cable, satellite, and over-the-air television distributors and we expect to consider additional international partnerships and distribution agreements over the next year in these markets.

**Increase Advertising Capabilities and Revenue.** We offer interactive advertising capabilities to advertisers, advertising agencies, and broadcast networks. Our advertising products include detailed reporting on actual viewing and screen-by-screen interaction by consumers. We offer our advertisers compelling interactive products such as branded Showcases including long-form video, requests for information, and customizable applications such as car configurators. We also offer the ability to enhance existing television commercials with interactive tags, enabling consumers to pause television and explore additional advertising content. We plan to continue developing and enhancing these offerings, which take advantage of the unique tagging, recording, storage, and viewing capabilities of the TiVo service. Some of our key advertisers and advertising agencies include Grey SF, Toyota Motors, Warner Brothers, Universal McCann, OMD, MediaEdge, Mediastorm, IdeaCity, Fox Corp, and the Procter & Gamble Company.

**Increase Audience Research Capabilities and Revenue.** We offer advertisers, advertising agencies and television networks second-by-second reporting on television program and commercial viewership in our subscribers' homes. We make this available via two primary products, Stop||Watch ratings service which is based on an anonymous, aggregate nightly sample of 100,000 TiVo subscribers (which is expected to increase to 300,000 by the fall of 2009), and Power||Watch which is based on a panel of 20,000 TiVo subscribers who have volunteered to participate in this on-going research project and have opted-in to allow viewership to be associated with their set-top boxes and, on an anonymous aggregated basis, various characteristics of their household which they have provided to us. We plan to continue developing and enhancing these offerings by using the viewing data already available to us to present deeper insights into how DVR households consume television content.

## **Our Technology**

TiVo has developed a technology portfolio that makes the TiVo service available on a standalone retail DVR product line that receives over-the-air digital signals and is CableCARD™ ready, on the integrated set-top boxes of a major satellite television provider, DIRECTV, through software downloads on set-top boxes for cable television providers Comcast and in the future Cox, and through over-the-air standard DVB-T in Australia and in the future New Zealand. We anticipate making the TiVo service available on set-top boxes of additional television service providers in the future. TiVo's technology for enabling the TiVo service includes: the TiVo service client software platform, the TiVo service infrastructure, and TiVo-enabled DVR hardware design.



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***TiVo Service Client Software.*** The TiVo service client software runs on TiVo-enabled DVRs. It consists of operational software required for a TiVo-enabled DVR to deliver the TiVo service. The software includes system components such as a media-oriented file system, a high-performance transactional database, an integrated security system, and application components such as media management and user interface. We have enhanced the client software to support multiple services and applications, such as receipt of broadband video content, digital music and photos. The TiVo client software manages interaction with the TiVo service infrastructure. After the initial set-up of the TiVo service, the TiVo-enabled DVR will automatically connect to the TiVo service infrastructure over a dial-up or broadband connection to download the program guide data, client software upgrades, Showcases, and other content.

We are currently extending the TiVo service client software to enable future deployment on certain commonly used integrated DVR set-top boxes. Under the terms of our agreement with Comcast, for example, Comcast has made the TiVo service available as a software upgrade to its already installed base of certain Motorola DVRs (in New England, currently, and additional regions in the future) and in the future on certain Cisco DVRs. We also intend to extend the TiVo service to run on other DVR set-top boxes capable of supporting Comcast-deployed middleware and forthcoming Open Cable Application Platform (OCAP) solutions.

***TiVo Service Infrastructure.*** The TiVo service infrastructure enables the ongoing operation of the TiVo service, managing the distribution of proprietary services, and specialized content such as program guide data, interactive advertising, and TiVo client software upgrades. It interfaces with our billing and customer support systems for service authorization and bug tracking. In addition, the TiVo service infrastructure collects anonymous viewing information uploaded from TiVo-enabled DVRs for use in our audience research measurement efforts. The infrastructure has also been designed to work with the networks of service provider customers, for example, by utilizing DIRECTV's satellite bandwidth to deliver data to DIRECTV receivers with TiVo service.

***TiVo-Enabled DVR Hardware Design.*** The TiVo-enabled DVR hardware design is a specification developed by TiVo for set-top boxes containing a hard disk drive, a CPU and memory, digital video chips, a modem, and other components. We provide this design to our contract manufacturer that produces TiVo-branded DVRs. The DVR hardware design has been integrated into a variety of products including standalone TiVo service DVRs, DIRECTV receivers, DVD players, and DVD recorders. The TiVo-enabled DVR hardware design includes a modular front-end that allows the basic platform to be used for digital and analog broadcast, digital and analog cable, and satellite applications. In addition, certain designs include USB ports to allow connection to broadband networks and external devices to enable existing and future services. A TiVo-enabled DVR without a subscription to the TiVo service has minimal functionality.

## **Significant Relationships**

***Comcast.*** On March 15, 2005, we entered into a non-exclusive licensing and marketing agreement with entities affiliated with Comcast Corporation. Pursuant to this agreement, we agreed to develop a TiVo-branded software solution for deployment on Comcast's DVR platforms, which would enable the TiVo user interface and DVR application, which includes features, such as WishList® and Season Pass®. In addition, we agreed to develop an advertising management system for deployment on Comcast platforms to enable the provision of local and national advertising to Comcast subscribers.

The initial term of this agreement expires on June 30, 2014. The agreement, as amended, provides Comcast with eight additional one-year renewal terms beyond the initial term, with certain deployment thresholds moved from June 30, 2014 to the renewal term beginning after June 30, 2019. Comcast will pay a recurring monthly fee per Comcast household which receives the TiVo service through Comcast. Comcast has also paid us fees for licensing the TiVo technology, and will continue to pay us fees for engineering services for the development and integration of the TiVo service software solution (subject to adjustment under certain circumstances) and will also pay us for the advertising management system. Under the initial and subsequent statements of work with Comcast, subject to the attainment of specified deployment thresholds, Comcast is entitled to recoup over time certain development fees paid to us through a mechanism effectively resulting in a reduction of certain subscription fees.

Additionally, Comcast has an option to purchase software maintenance and support. Comcast is entitled to a credit redeemable for ongoing development work that is based on a percentage of certain fees received by TiVo under the arrangement. Comcast will pay for any ongoing development work that exceeds the amount of the credit. TiVo will have the continuing right to sell certain types of advertising on the TiVo service offered through Comcast. TiVo will also have a limited right to sell certain types of advertising on other Comcast platforms enabled with the TiVo advertising management system, when such advertising features are developed, subject to Comcast's option to terminate such right in exchange for certain advertising-related payments.

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As part of this agreement, Comcast received a non-exclusive, non-transferable license to our intellectual property in order to deploy the TiVo service software solution and advertising management system, including certain trademark branding rights and a covenant not to assert under TiVo's patents, which rights extend only to Comcast Corporation, its affiliates, and certain of its vendors and suppliers with respect to Comcast products and services. Such non-exclusive, non-transferable license to the Company's intellectual property will, under certain circumstances, continue after the termination of this agreement. In addition, Comcast is entitled to certain most favored customer terms as compared with other multi-channel video distributors who license certain TiVo technology. Pursuant to the terms of this agreement, Comcast has the right to terminate the agreement in the event the Company is the subject of certain change of control transactions involving any of certain specified companies. The TiVo service software solution has launched in its initial market, the New England Region. We expect the TiVo service to be launched in additional markets in fiscal 2010, beginning with Chicago. Comcast accepted the TiVo advertising management system in fiscal 2009, and deployment of the advertising management system is expected in the future though no date has been set.

**DIRECTV.** DIRECTV is the largest provider of satellite television in the U.S. We have had a longstanding relationship with DIRECTV from 1999 to the present to provide the TiVo service to its customer base. As of January 31, 2009, we had approximately 1.7 million subscriptions through this relationship. In the fiscal year ended January 31, 2009, we reported \$22.9 million of DIRECTV-related revenues, which include subscription revenues, DIRECTV-related advertising revenues, and revenues from engineering services provided to DIRECTV. This represented 9% of our total net revenues.

DIRECTV currently pays us a recurring monthly per-household fee for access to the technology needed to provide its customers the TiVo service. We incur limited recurring expenses. We also recognize revenue from DIRECTV for engineering services work on integrated DIRECTV satellite receivers with TiVo service and the related service infrastructure. We are continuing to provide DIRECTV with engineering services related to currently installed hardware and updates and feature enhancements for existing platforms and customers.

Additionally, DIRECTV distributes features that enable advanced automatic recording capabilities and the delivery of promotional video to DIRECTV receivers with TiVo service. Subject to certain restrictions and exceptions, both DIRECTV and TiVo may sell advertising and audience research measurement data, with each party retaining all their respective revenues generated from such sales.

DIRECTV currently does not have the right to continue to distribute DIRECTV receivers with TiVo service to new customers. Instead, DIRECTV has been offering a new DVR to compete with the existing DIRECTV receivers with TiVo service. Additionally, DIRECTV has added high definition programming in a format that is not compatible with the existing TiVo-enabled high definition DVRs previously distributed by DIRECTV. As a result, we have seen a reduction in the number of DIRECTV receivers with TiVo service subscriptions, a trend that we expect to continue.

On September 3, 2008, the Company extended its current agreement with DIRECTV for the development, marketing, and distribution of a new HD DIRECTV DVR featuring the TiVo® service. Under the terms of this non-exclusive arrangement, TiVo expects to develop a version of the TiVo service for DIRECTV's broadband-enabled HD DVR for a launch to consumers as soon as possible in calendar year 2010. DIRECTV, upon deployment of the HD DIRECTV DVRs with TiVo service, is entitled to recoup, over time, a portion of certain development fees through a reduction in certain subscription fees. The new agreement also extends the mutual covenant not to sue with respect to each Company's products and services throughout the term of the new agreement.

Under this new agreement, DIRECTV will pay a substantially higher monthly fee for households using the new HD DIRECTV DVRs with TiVo (when and if the new version of the TiVo service is deployed) than the fees for previously deployed DIRECTV DVRs with TiVo service. DIRECTV will continue to pay the current monthly fee for all households using only the previously deployed DIRECTV DVRs with TiVo service. The fees paid by DIRECTV are subject to monthly minimum payments that escalate during the term of the agreement starting in 2010 and those minimum payments are substantially higher than in the prior agreement. The Company will continue to defer a portion of these fees as a non-refundable credit to fund mutually agreed development, with excess development work to be funded by DIRECTV. DIRECTV also has certain additional annual obligations to market and promote the new HD DIRECTV DVR featuring the TiVo Service once it has launched.

**Cox.** On August 22, 2006, we entered into a non-exclusive licensing and distribution agreement with Cox Communications (otherwise referred to as Cox). Pursuant to the agreement, we have agreed to develop a TiVo-branded software solution for deployment on Cox's DVR platforms, which would enable Cox to offer our DVR and advertising software to its customers and advertising clients respectively. In addition, we have agreed to develop an advertising management system for deployment on Cox platforms to enable the provision of local and national advertising to Cox subscribers.

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The initial term of our agreement is for five years from completion of the TiVo service software solution, but no longer than seven years after the effective date of the agreement. During the term of the agreement, we will provide Cox with certain customer support and maintenance services.

We will have the continuing right to sell certain types of advertising in connection with our service offered through Cox. We will also have a right to sell certain types of advertising on other Cox DVR set-top boxes enabled with the advertising management system. As part of the agreement, Cox is receiving a non-exclusive, non-transferable license to specific TiVo intellectual property to deploy the TiVo service software solution and advertising management system, including certain trademark branding rights. Cox will also reimburse us for the cost of certain third-party license fees. In addition, Cox may be entitled to certain most favored customer terms if we enter into future agreements with multi-channel video distributors whose commitment to deploy our DVRs and advertising software is less than Cox's commitment. Cox has the right to terminate the agreement in the event we are the subject of certain change of control transactions involving any of certain specified companies. Cox is in trials and we currently expect the TiVo service on Cox to launch in its initial markets during the first half of fiscal year 2010.

## **Sales and Marketing**

**Consumer Offerings.** We sell subscriptions to the TiVo service directly to consumers who have purchased a TiVo-enabled DVR. We currently sell TiVo service-only subscriptions either for a monthly subscription rate of up to \$12.95 per month (with discounts available to subscribers who have multiple subscriptions to the TiVo service), or a pre-pay option of \$129 for one-year, \$299 for three-years of TiVo service, or \$399 for product lifetime service (\$299 for existing customers who have at least one other qualifying subscription). TiVo-enabled DVRs are available from major retailers across the United States, including Best Buy. To drive sales while managing costs, we have shared marketing expenses with key retailers, and in some cases, we have offered to share a portion of the subscription revenues. We currently manufacture and sell three models of TiVo-enabled DVRs, the standard definition TiVo Series2 DT (Dual Tuner), the high-definition TiVo HD DVR, and the high-definition TiVo HD XL DVR which retail for \$149, \$299, and \$599, respectively.

**Services to Television Service Providers.** We also sell our technology and services to television service providers, such as Comcast, DIRECTV, and Cox who then market (or in the case DIRECTV and Cox, plan to market in the future) the TiVo service to their subscribers.

**Services to the Advertising Industry.** We also sell advertising and audience research measurement services, through a dedicated team of salespeople and through partnerships with third parties like IRI and NBCU.

## **Customer Service and Support**

For our TiVo-Owned standalone DVRs, we provide customer support through outsourced service providers as well as our internal customer service personnel. For our DIRECTV receivers with TiVo service, DIRECTV is primarily responsible for customer support. Comcast and, when launched, Cox are primarily responsible for customer support for their subscribers to the TiVo service. We provide training and other assistance to Comcast and Cox.

Individual customers have access to an Internet-based repository for technical information and troubleshooting techniques. They also can obtain support through other means such as the TiVo website, web forums, email, and telephone support.

We offer a manufacturer's warranty on the DVRs TiVo manufacturers which enable our TiVo-Owned subscriptions of 90 days for labor and one year for parts. For our direct sales that include both a TiVo-Owned standalone DVR and a subscription to our service (other than product lifetime subscriptions), we extend such manufacturer's warranty for parts only for the duration of the initial subscription which may last as long as three years. We contract with third parties to handle warranty repair.

## **Research and Product Development**

Our research and development efforts are focused on designing and developing the components necessary to enable the TiVo service. These activities include both hardware and software development.

TiVo Inc.

Fiscal Year Ended January 31,  
2009      2008      2007

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(in millions)

Research and Development Expenses	\$ 62.1	\$ 58.8	\$ 50.7
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We decreased the number of our regular, temporary, and part-time employees engaged in research and development by 9% from a total of 312 as of January 31, 2008 to 285 as of January 31, 2009.



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### **Manufacturing and Supply Chain**

We outsource the manufacturing of our products to third-party manufacturers. This outsourcing extends from prototyping to volume manufacturing and includes activities such as material procurement, final assembly, test, quality control, and shipment to distribution centers. Today the majority of our products are assembled in Mexico. Our primary distribution center is operated on an outsourced basis in Texas.

The components that make up our products are purchased from various vendors, including key suppliers such as Broadcom, which supplies system controllers. Some of our components, including system controllers, chassis, remote controls, and certain discrete components are currently supplied by sole source suppliers.

We often require substantial lead time to purchase components and manufacture anticipated quantities of DVRs that enable the TiVo service. This long lead time requires us to make component purchasing and inventory decisions well in advance of our peak selling periods. We offer our individual end-users who purchase from TiVo.com a 30-day money back guarantee. We typically do not offer a right of return or significant extended payment terms to our retailers.

### **Seasonality**

Sales of our DVRs and subscriptions to the TiVo service are affected by seasonality. Thus, we generate a significant number of our annual DVR sales and new subscriptions during and immediately after the holiday shopping season with associated increases in revenue. We also incur significant increases in expenses in the second half of the year related to hardware costs, revenue share and other payments to channel, and sales and marketing, subscription acquisition costs in anticipation of the holiday shopping season. There is less seasonality associated with our MSOs/Broadcasters, which includes relationships with companies such as DIRECTV and Comcast.

### **Competition**

We believe that the principal competitive factors in the DVR market are brand recognition and awareness, functionality, ease of use, availability, and pricing. We currently see two primary categories of DVR competitors: DVRs offered by satellite, cable, and telecommunications operators and DVRs offered by consumer electronics and software companies.

**Satellite, Cable, and Telecommunications DVR Competitors.** We compete against cable and satellite set-top boxes that integrate DVR functionality. These products often combine digital and analog receptions with DVR functionality; some versions offer dual tuner and/or high definition capabilities.

*Satellite:* Dish (formerly EchoStar) offers a range of DVR models, including standard definition and high definition models, most of which offer dual tuner capabilities. Certain models can output signals to multiple TVs within the household. Additionally, Dish has spent a significant amount of capital advertising and promoting its DVR as better than TiVo. Further, Dish offered its DVR at lower monthly service fees than TiVo and most other television providers. DIRECTV has introduced a DVR technology including both standard definition and high definition broadcasts.

*Cable:* Cable operators have made DVR technology available on set-top boxes such as from Scientific-Atlanta (owned by Cisco) and Motorola. Other competition in the cable DVR market comes from other software providers including TV Guide, Microsoft, Aptiv, Digital, and Digeo. U.S. cable operators are currently deploying server-based Video on Demand (VOD) technology from SeaChange, Concurrent, and others, which could potentially evolve into competition. Additionally, we are aware of at least one U.S. cable operator, Cablevision, Inc., which stated a desire to test server-based DVR technology, in the future if legally permissible. To the extent that cable operators offer regular television programming as part of their server-based VOD offerings and DVR technology, consumers have an alternate means of watching time-shifted shows besides DVRs.

*Telecommunications:* Telecommunications operators have deployed DVR technology in connection with the provision of television services to consumers either in partnership with other television providers, such as Verizon's FIOS service, AT&T's U-verse service or through partnerships with DIRECTV (Qwest, Verizon, AT&T).

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**Consumer Electronics Competitors.** We compete against several types of products with basic time-slot based recordings or enhanced electronic program guide (EPG) based DVR functionality offered by consumer electronics companies. These products record a television signal output from a cable, satellite, or antenna, including internationally through digital over-the-air standards such as DVB-T.

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*Standalone DVRs and hard drive-equipped DVD recorders, TVs, and game consoles:* Several consumer electronics companies, including Panasonic and Sony, produce DVD recorders with hard drives. In addition, several consumer electronics companies have television products that are internet enabled, allowing them to access content and applications from various sources. Some of these TVs offer CableCARD functionality, allowing the receipt of encrypted digital cable programming without the need for a digital cable set-top box. In general, these hard-drive equipped DVD recorders and TVs do not require DVR service fees and offer basic DVR functionality. In the future, companies such as Sony and Microsoft could incorporate DVR technology into their video game consoles, and Microsoft has now enabled the digital delivery of video programming over the internet to its game console.

*Personal computers with DVR software:* Microsoft's Windows XP Media Center and Vista Editions contain expanded digital media features including enhanced DVR functionality. PC manufacturers including Dell and Hewlett Packard offer PCs running this Microsoft software and other PC manufacturers such as Apple Computer may offer similar functionality in the future. Additionally, software programs such as MythTV and SnapStream can be loaded onto a personal computer to provide enhanced DVR functionality. TiVo does offer a software-only version of the TiVo Service called Nero LiquidTV™ | TiVo PC.

**Licensing Competitors.** Our licensing revenues depend upon both our ability to successfully negotiate licensing agreements with our consumer electronics and service provider customers and, in turn, upon our customers' successful commercialization of their underlying products. In addition, we face competition from companies such as Microsoft, Gemstar, OpenTV, NDS, D&M Holdings, Digeo, Gotuit, and 2Wire, which have created competing digital video recording technologies. Such companies may offer more economically attractive licensing agreements to service providers and manufacturers of DVRs.

**Established Competition for Advertising Budgets.** Digital video recorder services, in general, and TiVo, specifically, compete with other advertising media such as print, radio, television, Video on Demand, internet, and other emerging advertising platforms for a share of advertisers' total advertising budgets. If advertisers do not perceive digital video recording services, in general, and TiVo specifically, as an effective advertising medium, they may be reluctant to advertise on the TiVo service. In addition, advertisers may not support or embrace the TiVo technology due to a belief that our technology's ability to fast-forward through commercials will reduce the effectiveness of general television advertising.

**Audience Research Competitors.** We compete with advertising research companies such as Nielsen, TNS, and RenTrak for research spend from advertisers, advertising agencies, and television networks. These companies have all announced intentions to provide second-by-second viewership information based on data from digital cable set-top-boxes and satellite set-top-boxes. The type of research we provide is a discretionary purchase. If advertisers, advertising agencies, and television networks perceive the information provided by these companies to be more valuable, they may invest in those services rather than ours, or they may choose not to purchase this type of information at all.

## **Patents and Intellectual Property**

We have filed patent applications relating to many critical aspects of the design, functionality, and operation of TiVo products and services. We have been awarded approximately 146 foreign and domestic patents and have approximately 251 foreign and domestic patent applications pending. We have also filed patent applications related to technology that we may incorporate in future versions of our products and services. Patents we hold the rights to include:

U.S. patent number 6,327,418, entitled *Method and Apparatus Implementing Random Access and Time-Based Functions on a Continuous Stream of Formatted Digital Data*, originally filed on April 3, 1998, which describes a method of controlling streaming media in a digital device, including the functions that enable DVRs to pause live TV as well as rewind, fast-forward, play, play faster, play slower, and play in reverse television signals cached by the DVR. We refer to this as the "TrickPlay" patent. The expiration date of the TrickPlay patent is April 3, 2018.

U.S. patent number 6,792,195 entitled *Method and Apparatus Implementing Random Access and Time-Based Functions on a Continuous Stream of Formatted Digital Data*, which is a continuation of the TrickPlay patent. The expiration date of this patent is likewise April 3, 2018.

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U.S. patent 6,233,389, entitled *Multimedia Time Warping System*, originally filed on July 30, 1998, which describes many of the key inventions associated with the TiVo-enabled DVR software and hardware design. We refer to this as the TimeWarp patent. Key inventions claimed in the patent include a method for recording one program while playing back another or watching a program as it is recording, often referred to as time-shifting the program; a method for efficient and low-cost processing and synchronizing of the various multimedia streams in a television signal such as video, audio, and closed-captioning, and a storage format that easily supports advanced TrickPlay capabilities. The expiration date of the TimeWarp patent is July 30, 2018.

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TiVo has also acquired the exclusive right to license and enforce U.S. patent number 5,241,428 entitled *Variable-Delay Video Recorder* known in the industry as the Goldwasser Patent. Filed in March 1991, the Goldwasser Patent is one of the earliest patents regarding digital video recorders of which we are aware. This patent covers devices that permit the simultaneous recording and playback of video material with a variable time delay between recording and playback of a given video program segment. The expiration date of the Goldwasser Patent is March 12, 2011.

We have also purchased 12 foreign and domestic patents and 6 foreign patent applications from International Business Machines Corporation, or IBM. These patents and patent applications generally relate to audience research measurement, integration of television signals with internet access, automatic rescheduling of recordings, content screening, enhanced program information search, and electronic program guide interface enhancements.

Additionally, on September 28, 2006, we entered into a patent cross license agreement with IBM, under which we paid certain cash consideration to IBM, and each party granted to the other a non-exclusive, worldwide, royalty-free license to such party's patents that are entitled to a priority date on or before September 28, 2006, including all patents and patent applications in existence as of that date with limited exceptions. The license granted by IBM to us extends to all products other than general purpose data processing products and data storage devices that are primarily sold separately from other hardware. The license that we granted to IBM extends to all products, other than digital media recorders and digital media recorder software. No license was granted, directly or by implication, to permit the combination of any product with any other item.

TiVo has secured numerous trademark registrations for its distinctive marks, including but not limited to registrations, for the marks TiVo, the TiVo logo, Season Pass, Thumbs logos, and certain sound marks. Pending trademark applications include, but are not limited to, StopItWatch, Mevo, and Mivo. Additionally, we have international trademark applications pending for several of these trademarks. We anticipate ongoing progress in our establishment of a defensible and useful intellectual property portfolio; however, we cannot assure you that current patents will be enforceable or our current patent applications will ever be allowed or granted. See Part I, Item 1A, Risk Factors Our success depends on our ability to secure and protect our patents, trademarks, and other proprietary rights and Pending Intellectual Property Litigation for additional information concerning our intellectual property.

## **Privacy Policy**

We have adopted a privacy policy, which we make available on our website at [www.tivo.com/privacy](http://www.tivo.com/privacy) and deliver to each new subscriber to the TiVo service. This policy was last updated in August 2008 to cover new features that we have introduced and plan to introduce in the future. This policy explains that we collect certain types of information such as anonymous viewing and diagnostic information, but all viewing-information that is linked or associated with an individual identity will not be disclosed without the viewer's affirmative consent. We further give subscribers the ability to opt-out from the collection of anonymous viewing information and diagnostic information log files.

We have designed a system that ensures that any viewing information transmitted from a TiVo enabled DVR is anonymous and remains unidentifiable to a particular viewer (known as anonymous viewing information), unless that subscriber affirmatively consents to such identification before any viewing data leaves the DVR. Anonymous viewing information is collected separately from any information that identifies a viewer personally. As a result, we may be able to use this anonymous information to tell a broadcast or advertising client the percentage of our viewers that recorded a particular program or advertisement, but we will not know, nor be able to tell the client, which of our viewers did so, unless a viewer decides to provide that information.

## **Employees**

At March 23, 2009, we employed approximately 463 employees, including 56 in service operations, 247 in research and development, 54 in sales and marketing, and 106 in general and administration. We also employ, from time to time, a number of temporary and part-time employees as well as consultants on a contract basis. Our future success will depend in part on our ability to attract, train, retain, and motivate highly qualified employees. We may not be successful in attracting and retaining such personnel. Our employees are not represented by a collective bargaining organization and we have never experienced a work stoppage or strike. Our management considers employee relations to be good.

**Table of Contents****Executive Officers and Key Employees (as of March 23, 2009):**

<b>Name</b>	<b>Age</b>	<b>Position</b>
Thomas Rogers	54	Chief Executive Officer and President
Anna Brunelle	41	Chief Financial Officer
James Barton	50	Chief Technical Officer and Senior Vice President
Jeffrey Klugman	48	Senior Vice President and General Manager, Service Provider and Advertising Products Divisions
Mark A. Roberts	48	Senior Vice President of Consumer Products and Operations
Matthew Zinn	44	Senior Vice President, General Counsel, Secretary and Chief Privacy Officer
Nancy Kato	54	Senior Vice President, Human Resources

*Thomas Rogers* was appointed by our Board to serve as a director in September 2003 and was named President and Chief Executive Officer of TiVo, effective July 1, 2005. In connection with being appointed as our President and Chief Executive Officer, Mr. Rogers resigned as Vice Chairman of our board of directors and as a Class II Director and was immediately reappointed by our board of directors as a Class III Director. Since November 2006, Mr. Rogers has served as member of the Board of Directors of Idearc Inc. (NYSE: IAR), one of the nation's largest providers of yellow and white pages directories and related advertising products. Mr. Rogers served as Chairman of the Board of Teleglobe International Holdings, Ltd. (NASDAQ:TLGB), a provider of international voice, data, internet, and mobile roaming services, a position he held from November 2004 to February 2006. Since July 2003, he has also served as Chairman of TRget Media, a media industry investment and operations advisory firm. From 2004 until July 2005, he also served as the Senior Operating Executive for media and entertainment for Cerberus Capital Management, a large private equity firm. From October 1999 until April 2003, Mr. Rogers was Chairman and CEO of Primedia, Inc. (NYSE:PRM), a print, video, and online media company. From January 1987 until October 1999, Mr. Rogers held positions with National Broadcast Company, Inc. including President of NBC Cable and Executive Vice President. Mr. Rogers holds a B.A. degree in Government from Wesleyan University and a J.D. degree from Columbia Law School.

*Anna Brunelle* was named Chief Financial Officer in September 2008 and is responsible for financial operations including accounting, tax, treasury, purchasing, internal audit, financial reporting and planning. Ms. Brunelle joined TiVo in April 2005 and served as Vice President, Controller, and Treasurer prior to her promotion. Prior to joining TiVo, Ms. Brunelle held positions at Broadvision, Adaptec, Roxio, and Napster. Ms. Brunelle began her career at Deloitte & Touche, LLP in San Jose, and has also held senior finance roles at Silicon Valley start-ups where she was responsible for raising capital, developing business plans, integrating acquisitions, and building the finance teams. Ms. Brunelle is a CPA and holds a B.A. in Business Administration/ Accounting from California Polytechnic State University, San Luis Obispo.

*James Barton* is a co-founder of TiVo and served as TiVo's Vice President of Research and Development, Chief Technical Officer and Director since our inception to January 2004 and is currently Chief Technical Officer and Senior Vice President. From June 1996 to August 1997, Mr. Barton was President and Chief Executive Officer of Network Age Software, Inc., a company that he founded to develop software products targeted at managed electronic distribution. From November 1994 to May 1996, Mr. Barton served as Chief Technical Officer of Interactive Digital Solutions Company, a joint venture of Silicon Graphics Incorporation (SGI) and AT&T Network Systems created to develop interactive television systems. From June 1993 to November 1994, Mr. Barton served as Vice President and General Manager of the Media Systems Division of SGI. From January 1990 to May 1991, Mr. Barton served as Vice President and General Manager for the Systems Software Division of Silicon Graphics. Prior to joining SGI, Mr. Barton held technical and management positions with Hewlett-Packard and Bell Laboratories. Mr. Barton holds a B.S. degree in Electrical Engineering and an M.S. degree in Computer Science from the University of Colorado at Boulder.

*Jeffrey Klugman* was named Senior Vice President and General Manager, Service Provider and Advertising Products Division in April 2005. Mr. Klugman had served as Vice President of Technology Licensing from December 2001 until February 2004 and Vice President, TiVo Platform Business from February 2004 until April 2005. Prior to joining TiVo, Mr. Klugman was CEO of PointsBeyond.com, an internet-portal start-up focused on outdoor activities and adventures. In 1999, Mr. Klugman was Vice President of Marketing and Business Development for Quantum Corporation's Consumer Electronics Business Unit. Mr. Klugman holds a B.S. degree in engineering from Carnegie Mellon University and an M.B.A. degree from the Stanford Business School.

*Mark A. Roberts* was named Senior Vice President of Consumer Products and Operations in October 2005 responsible for Consumer Products Engineering and Product Strategy, Manufacturing, Distribution, Call Center, Service Operations, Information Technology, Facilities and Broadcast Center Operations. He had served as Senior Vice President

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of Engineering since December 2002 until October 2005 and Chief Information Officer of TiVo from March 1999 until December 2002. Prior to joining TiVo, he served as Vice President of Information Technology at Acuson Corporation, a medical ultrasound company, from March 1996 to March 1999. From July 1990 to March 1996, Mr. Roberts was Director of Information Systems at SGI. Mr. Roberts holds a B.S. degree in Economics from Santa Clara University.

*Matthew Zinn* was named Senior Vice President, General Counsel, Secretary, and Chief Privacy Officer in April 2006. Mr. Zinn had served as Vice President, General Counsel, and Chief Privacy Officer since July 2000 and as Corporate Secretary since November 2003. From May 1998 to July 2000, Mr. Zinn was the Senior Attorney, Broadband Law and Policy for the MediaOne Group, a global communications company. From August 1995 to May 1998, Mr. Zinn served as corporate counsel for Continental Cablevision, the third largest cable television operator in the United States. From November 1993 to August 1995, he was an associate with the Washington, D.C., law firm of Cole, Raywid & Braverman, where he represented cable operators in federal, state, and local matters. Mr. Zinn holds a B.A. degree in Political Science from the University of Vermont and holds a J.D. degree from the George Washington University National Law Center.

*Nancy Kato* was named Senior Vice President of Human Resources in April 2006. Ms. Kato has served as Vice President, Human Resources since January 2005. From January 2003 to January 2005 Ms. Kato was Vice President of Global Compensation at Hewlett-Packard. From December 2000 to October 2002 Ms. Kato was Senior Vice President of Human Resources for Ariba. She has also held senior roles at Compaq and Tandem. Ms. Kato holds a B.S. in Health Sciences and M.A. in Education and Counseling from San Jose State University.

## **Other Information**

TiVo was incorporated in August 1997 as a Delaware corporation and is located in Alviso, California. In August of 2000, we formed a wholly owned subsidiary, TiVo (UK) Ltd., in the United Kingdom. In October of 2001, we formed a subsidiary, TiVo International, Inc., a Delaware corporation. On January 12, 2004, we acquired Strangeberry, Inc., a small Palo Alto based technology company specializing in using home network and broadband technologies to create new entertainment experiences on television. On July 16, 2004, TiVo Intl. II, Inc., a wholly owned subsidiary of TiVo Inc., was incorporated in the Cayman Islands. On March 22, 2005, TiVo Brands LLC, a wholly owned subsidiary of TiVo Inc., was incorporated in the State of Delaware.

We maintain an Internet website at the following address: [www.tivo.com](http://www.tivo.com). The information on our website is not incorporated by reference in this annual report on Form 10-K or in any other filings we make with the Securities and Exchange Commission (SEC).

We make available on or through our website certain reports and amendments to those reports that we file with or furnish to the SEC in accordance with the Securities Exchange Act of 1934; as amended. These include our annual reports on Form 10-K, our quarterly reports on Form 10-Q, and our current reports on Form 8-K. We make this information available on or through our website free of charge as soon as reasonably practicable after we electronically file the information with, or furnish it to, the SEC.

## **ITEM 1A. RISK FACTORS**

### **We have incurred significant net losses and may never achieve sustained profitability.**

Prior to the fiscal year ended January 31, 2009, we incurred significant net losses and had substantial negative cash flows. During the fiscal years ended January 31, 2009, 2008, and 2007, our net income (losses) were \$103.6 million, \$(31.6) million, and \$(49.1) million, respectively. During the fiscal year ended January 31, 2009, our cash provided by our operations was \$105.7 million and we had a net income of \$103.6 million. The net income and cash provided by operations for the fiscal year ended January 31, 2009 reflects \$104.6 million in litigation proceeds received from EchoStar. This amount was recorded as \$(87.8) million in litigation proceeds within the operating expenses section of the consolidated statement of operations and \$16.8 million in interest income. Additionally, we recorded \$1.3 million in tax expense related to the receipt of these monies. As of January 31, 2009, we had an accumulated deficit of \$(672.2) million. The size of future net losses will depend in part on our subscription revenues and on our expenses. We will need to generate significant additional revenues to achieve sustained profitability.

### **We face intense competition from a number of sources, which may impair our revenues, increase our subscription acquisition cost, and hinder our ability to generate new subscriptions.**

The DVR market is rapidly evolving, and we face significant competition. Moreover, the market for in-home entertainment is intensely competitive and subject to rapid technological change. As a result of this intense competition, we could incur increased subscription acquisition costs that could adversely affect our ability to reach or sustain profitability in the future. If new technologies render the DVR market obsolete, we may be unable to generate sufficient revenue to cover our expenses and obligations.





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We believe that the principal competitive factors in the DVR market are brand recognition and awareness, functionality, ease of use, availability, and pricing. We currently see two primary categories of DVR competitors: DVRs offered by telecommunications, cable and satellite operators and DVRs offered by consumer electronics and software companies. For more information on our competitors, see our discussion on competition in Item 1. Business.

**Licensing Competitors.** Our licensing revenues depend both upon our ability to successfully negotiate licensing agreements with our consumer electronics and service provider customers and, in turn, upon our customers' successful commercialization of their underlying products. We face competition from companies such as Microsoft, Gemstar, OpenTV, NDS, DIRECTV, EchoStar, Pace, Digeo, Motorola, Cisco, Gotuit, and 2Wire, which have created competing digital video recording technologies. Such companies may offer more economically attractive licensing agreements to service providers and manufacturers of DVRs.

**Established Competition for Advertising Budgets.** Digital video recorder services, in general, and TiVo, specifically, compete with other advertising media such as print, radio, television, internet, Video on Demand, and other emerging advertising platforms for a share of advertisers' total advertising budgets. If advertisers do not perceive digital video recording services, in general, and TiVo specifically, as an effective advertising medium, they may be reluctant to advertise on the TiVo service. In addition, advertisers may not support or embrace the TiVo technology due to a belief that our technology's ability to fast-forward through commercials will reduce the effectiveness of general television advertising.

**We depend on a limited number of third parties to manufacture, distribute, and supply critical components, assemblies, and services for the DVRs that enable the TiVo service. We may be unable to operate our business if these parties do not perform their obligations.**

The TiVo service is enabled through the use of a DVR manufactured for us by a third-party contract manufacturer. In addition, we rely on sole suppliers for a number of key components for the DVRs. We also rely on third parties with whom we outsource supply-chain activities related to inventory warehousing, order fulfillment, distribution, and other direct sales logistics. We cannot be sure that these parties will perform their obligations as expected or that any revenue, cost savings, or other benefits will be derived from the efforts of these parties. If any of these parties breaches or terminates their agreement with us or otherwise fails to perform their obligations in a timely manner, we may be delayed or prevented from commercializing our products and services. Because our relationships with these parties are non-exclusive, they may also support products and services that compete directly with us, or offer similar or greater support to our competitors. Any of these events could require us to undertake unforeseen additional responsibilities or devote additional resources to commercialize our products and services. This outcome would harm our ability to compete effectively and achieve increased market acceptance and brand recognition.

In addition, we face the following risks in relying on these third parties:

*If our manufacturing relationships are not successful, we may be unable to satisfy demand for our products and services.* We manufacture DVRs that enable the TiVo service through a third-party contract manufacturer. Delays, product shortages, and other problems could impair our retail distribution and brand image and make it difficult for us to attract subscriptions. In addition, the loss of a manufacturer would require us to identify and contract with alternative sources of manufacturing, which we may be unable to do or which could prove time-consuming and expensive.

*We are dependent on sole suppliers for several key components and services. If these suppliers fail to perform their obligations, we may be unable to find alternative suppliers or deliver our products and services to our customers on time.* We currently rely on sole suppliers for a number of the key components used in the TiVo-enabled DVRs and the TiVo service. For example, Broadcom is the sole supplier of the system controller for our DVR.

We do not currently have a long-term written supply agreement with Broadcom. Therefore, Broadcom may not be contractually obligated to supply us with these key components on a long-term basis or at all. In addition to the above, we have several sole suppliers for key components of our products currently under development, although it is currently anticipated that those will be provided under signed supply agreements.

*Tribune is the sole supplier of the program guide data for the TiVo service.* Tribune Media Services, Inc., or Tribune, is the current sole supplier of program guide data for the TiVo service. Our current Television Listings Data Agreement with Tribune became effective on May 14, 2007 and has an initial term of five years and with TiVo having the right to renew the agreement for four additional years. The agreement provides each party with a termination right if the other party becomes controlled by certain third parties. Tribune Media Services, along with their parent company, Tribune Co., filed Chapter 11 bankruptcy on December 8, 2008. As a result, Tribune or Tribune Media Services, Inc. could reject the Television Listing Data Agreement and we would be left with an unsecured claim in Tribune's bankruptcy. If Tribune



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breaches its obligation to provide us with data, rejects the agreement or otherwise fails to perform its obligations under our agreement, we would be unable to provide certain aspects of the TiVo service to our customers. We may be unable to secure an alternate source of guide data on acceptable terms.

If our arrangements with Broadcom or Tribune or with our third-party contract manufacturer were to terminate or expire without a replacement arrangement in place, or if we or our manufacturers were unable to obtain sufficient quantities of these components or required program guide data from our suppliers, our search for alternate suppliers could result in significant delays, added expense or disruption in product or service availability.

*We depend upon third parties to provide supply chain services related to inventory management, order fulfillment, and direct sales logistics.* We rely on third party vendors to provide cost-effective and efficient supply chain services. Among other activities, these outsourced services relate to direct sales logistics, including order fulfillment, inventory management and warehousing, and distribution of inventory to third party retailers. If one or several of our third party supply chain partners were to discontinue services for us, our ability to fulfill direct sales orders and distribute inventory timely, cost effectively, or at all, would be hindered which could in turn harm our business.

*We are dependent on our major retail partners for distribution of our products to consumers.* We currently rely on our relationships with major retail distributors including Best Buy, and others for distribution of TiVo-enabled DVRs. We do not typically enter into long-term volume commitments with our major retail distributors. If one or several of our major retail partners were to discontinue selling our products, the volume of TiVo-enabled DVRs sold to consumers could decrease which could in turn harm our business.

### **Intellectual property claims against us could be costly and could result in the loss of significant rights.**

From time to time, we receive letters from third parties alleging that we are infringing on their intellectual property. Regardless of their merit, we are forced to devote time and resources to respond to these letters. In addition, if any of these third parties or others were to sue us, our business could be harmed because intellectual property litigation may:

be time-consuming and expensive;

divert management's attention and resources away from our business;

cause delays in product delivery and new service introduction;

cause the cancellation of current or future products or services; or

require us to pay significant royalties and/or licensing fees.

*The emerging enhanced-television industry is highly litigious.* Additionally, many patents covering interactive television technologies have been granted but have not been commercialized. A number of companies in the enhanced-television industry earn substantial profits from technology licensing, and the introduction of new technologies such as ours is likely to provoke lawsuits from such companies. A successful claim of infringement against us, our inability to obtain an acceptable license from the holder of the patent or other right, or our inability to design around an asserted patent or other right could cause our manufacturers to cease manufacturing DVRs that enable the TiVo service, our retailers to stop selling the product or us to cease providing our service, or all of the above, which would eliminate our ability to generate revenues.

*Under our agreements with many of our manufacturing and licensing partners, we are obligated to indemnify them in the event that our technology infringes upon the intellectual property rights of third parties.* Due to these indemnity obligations, we could be forced to incur material expenses if our manufacturing and licensing partners are sued. If they were to lose the lawsuit, our business could be harmed. In addition, because the products sold by our manufacturing and licensing partners often involve the use of other persons' technology, this increases our exposure to litigation in circumstances where there is a claim of infringement asserted against the product in question, even if the claim does not pertain to our technology.

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For example, on April 29, 2005, EchoStar Technologies Corporation filed a complaint against TiVo and Humax USA, Inc. in the U.S. District Court for the Eastern District of Texas alleging infringement of U.S. Patent Nos. 5,774,186 (Interruption Tolerant Video Program Viewing), 6,529,685 B2 (Multimedia Direct Access Storage Device and Formatting Method), 6,208,804 B1 (Multimedia Direct Access Storage Device and Formatting Method) and 6,173,112 B1 (Method and System for Recording In-Progress Broadcast Programs). The complaint alleges that TiVo and Humax have infringed, contributorily infringed and/or actively induced infringement of the patents by making, using, selling or importing digital video recording devices, digital video recording device software and/or personal television services in the United States

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that allegedly infringe the patents, and that such infringement is willful and ongoing. Under the terms of our agreement with Humax governing the distribution of certain DVRs that enable the TiVo service, we are required to indemnify Humax against any claims, damages, liabilities, costs, and expenses relating to claims that our technology infringes upon intellectual property rights owned by third parties. We intend to defend this action vigorously; however, we are incurring expenses in connection with this lawsuit, which could become material in the future, and in the event there is an adverse outcome, our business could be harmed. For a complete description of this lawsuit, please see our discussion under Item 3. Legal Proceedings.

*Pending intellectual property litigations.* We are subject to a number of pending intellectual property litigations. We intend to defend these actions vigorously; however we could be forced to incur material expenses in connection with these lawsuits and/or as a result of our indemnification obligations and, in the event there is an adverse outcome in any of these cases, our business could be harmed. For more information on our pending intellectual property litigations, please see our discussion under Item 3. Legal Proceedings.

### **We have filed a patent infringement lawsuit against EchoStar Communications Corporation. We are incurring significant expenses as a result, and an adverse outcome in the lawsuit could harm our business.**

On January 5, 2004, we filed a complaint against EchoStar Communications Corporation (ECC) in the U.S. District Court for the Eastern District of Texas alleging willful and deliberate infringement of U.S. Patent No. 6,233,389, entitled Multimedia Time Warping System. On January 15, 2004, we amended our complaint to add EchoStar DBS Corporation, EchoStar Technologies Corporation, and Echosphere Limited Liability Corporation as additional defendants. We allege that we are the owner of this patent and further allege that the defendants have willfully and deliberately infringed this patent by making, selling, offering to sell and/or selling digital video recording devices, digital video recording device software, and/or personal television services in the United States. On April 13, 2006, the jury rendered a verdict in our favor for the amount of approximately \$74.0 million dollars. On January 31, 2008, the U.S. Court of Appeals for the Federal Circuit in Washington, D.C. unanimously ruled in favor of TiVo Inc. in connection with EchoStar's appeal of the district court judgment of patent infringement against EchoStar with respect to several claims (so called software claims) of the patent, upholding the full award of damages from the district court, and ordering that the stay of the district court's injunction against EchoStar's infringing digital video recorders that was issued pending appeal will dissolve when the appeal becomes final. On April 11, 2008, the Federal Circuit denied EchoStar's combined petition for a panel rehearing and en banc rehearing of the Federal Circuit's denial of their appeal of the district court's judgment. On October 6, 2008, the Supreme Court denied EchoStar's writ of certiorari. On October 8, 2008, the Company received \$104.6 million from EchoStar. On February 17, 2009, the U.S. District Court held a contempt hearing in connection with EchoStar's alleged work-around of the Company's patent. We continue to incur material expenses in connection with this lawsuit. For a complete description of this lawsuit, please see our discussion under Item 3. Legal Proceedings.

### **Digital video recorders could be the subject of future regulation relating to copyright law or evolving industry standards and practices that could adversely impact our business.**

In the future, copyright statutes or case law could be changed to adversely impact our business by restricting the ability of consumers to temporally or spatially shift copyrighted materials for their own personal use. Our business could be harmed as a result. In addition, we are aware that some media companies may attempt to form organizations to develop standards and practices in the digital video recorder industry. These organizations or individual media companies may attempt to require companies in the digital video recorder industry to obtain copyright or other licenses. Lawsuits or other actions taken by these types of organizations or companies could make it more difficult for us to introduce new services, delay widespread consumer acceptance of our products and services, restrict our use of some television content, increase our costs, and adversely affect our business.

### **A significant part of our installed subscription base results from our relationship with DIRECTV which we expect to continue to decrease in the future due to DIRECTV's on-going support of a competing DVRs.**

Although we are working with DIRECTV to develop a new high-definition DVR with TiVo for DIRECTV for launch in the future, DIRECTV does not currently have the right to manufacture and distribute TiVo DVRs to DIRECTV subscribers. As a result of this and DIRECTV's support of a competing DVR we expect the number of our DIRECTV with TiVo subscriptions to continue to decrease in the future. As a consequence of the loss of these future revenues from these DIRECTV subscribers with TiVo service subscriptions, our business may be harmed.

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### **We face risks in connection with our amended development and services agreements with DIRECTV for the development and deployment of a new HD DIRECTV DVR featuring the TiVo service.**

*We may encounter delays in development under our new agreement with DIRECTV.* Under the terms of our non-exclusive arrangement, we are working with DIRECTV and its suppliers to develop a version of the TiVo service for DIRECTV's broadband-enabled HD DVR platform to deliver the new HD DIRECTV DVR with TiVo Service to DIRECTV for a launch to consumers as soon as possible in calendar year 2010. We may face significant technological, third party supplier and other challenges in our development of the TiVo service for DIRECTV's broadband-enabled HD DVR platform, any of which could delay or prevent us from delivering the new product. If we are unable to successfully develop this new broadband-enabled HD DVR with TiVo service for deployment by DIRECTV, we would not be able to acquire new subscribers from DIRECTV under these new agreements and our business could be harmed.

### **It may be difficult for us or investors to evaluate trends and other factors that affect our business due to the rapidly evolving and highly competitive nature of the DVR services product category.**

DVR services are a rapidly evolving and highly competitive product category and it may be difficult to predict the future growth rate, if any, or size of the market, for our products and services. We may be unable to accurately forecast customer behavior and recognize or respond to emerging trends, changing preferences or competitive factors facing us. As a result, we may be unable to make accurate financial forecasts and adjust our spending in a timely manner to compensate for any unexpected revenue shortfall. Such inability could cause our net losses in a given quarter to be greater than expected, which could cause the price of our stock to decline. It may be difficult to predict accurately our future revenues, costs of revenues, expenses, or results of operations. In addition, any evaluation of our business must be made in light of the risks and difficulties encountered by companies offering products or services in new, rapidly evolving, and highly competitive markets.

### **We face a number of competitive challenges in the sale and marketing of the TiVo service and products that enable the TiVo service.**

Our success depends upon the successful retail marketing of the TiVo service and related DVRs, which began in the third quarter of calendar year 1999.

*We compete with other consumer electronics products and home entertainment services for consumer spending.* DVRs and the TiVo service compete in markets that are crowded with other consumer electronics products and home entertainment services. The competition for consumer spending is intense, and many consumers on limited budgets may choose other products and services over ours. DVRs compete for consumer spending with products such as DVD players, satellite television systems, personal computers, and video game consoles. The TiVo service competes with home entertainment services such as cable and satellite television, movie rentals, pay-per-view, Video on Demand, and mail-order DVD services. See also *We face intense competition from a number of sources, which may impair our revenues, increase our subscription acquisition cost, and hinder our ability to generate new subscriptions.*

*Many of these products or services have established markets, broad user bases, and proven consumer acceptance.* In addition, many of the manufacturers and distributors of these competing devices and services have substantially greater brand recognition, market presence, distribution channels, advertising and marketing budgets and promotional activities, and other strategic partners. Faced with this competition, we may be unable to effectively differentiate our DVRs and the TiVo service from other consumer electronics devices or entertainment services.

*We compete with digital cable, satellite, and telecommunications DVRs.* Cable, satellite, and telecommunications service providers are accelerating deployment of integrated cable and satellite receivers with DVRs that bundle DVR services with other digital services and do not require their customers to purchase hardware. If we are not able to enter into agreements with these service providers to embed the TiVo service into their offerings, our ability to attract their subscribers to the TiVo service would be limited and our business, financial condition and results of operations could be harmed.

*In the future, we may also compete with digital cable, satellite, and telecommunications services that provide consumers with DVR services via a network connection on an on-demand basis.* We are aware of at least one U.S. cable operator, Cablevision, Inc., which has stated a desire to test server-based DVR technology, in the future if legally permissible. To the extent that cable, satellite, or telecommunication operators offer regular television programming with DVR services as part of their server-based VOD offerings, consumers would have an alternate means of watching time-shifted shows besides physical DVRs. In such an event, competitors would be able to deploy competing DVR services without the expense of deploying DVR hardware in consumer homes. Such an event would impair our ability to compete in a cost-effective manner with these television providers as well as attract and retain customers, in which case, our business, financial condition and results of operations could be harmed.

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*We are currently only able to offer a high definition DVR that has access to digital cable signals.* Only the cable industry in the United States is currently required to provide access to digital high definition television signals through CableCARD technology. Without separate agreements with satellite operators, such as our agreement with DIRECTV, or other telecommunication providers, such as Verizon or AT&T, who offer television service that would give us access to digital and high definition television, our ability to attract their subscribers to the TiVo service is limited and our business, financial condition and results of operations could be harmed.

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*Consumers may not be willing to pay for our products and services.* Many of our customers already pay monthly fees for cable or satellite television. We must convince these consumers to pay an additional subscription fee to receive the TiVo service. Consumers may perceive the TiVo service and related DVR as too expensive. In order to continue to grow our subscription base, we may need to reduce our costs and lower the price of our DVR or service fees. The availability of competing services that do not require subscription fees or that are enabled by low or no cost DVRs will harm our ability to effectively attract and retain subscriptions.

*Growth in our TiVo-Owned subscriptions and related revenues could be harmed by competitive offerings by Comcast and Cox who also would be able to offer the TiVo service in the future.* Our ability to grow our TiVo-Owned subscriptions and related revenues could be harmed by competition from our licensing partners, such as Comcast and Cox, who may be able to offer TiVo-branded DVR solutions to their customers at more attractive pricing than we may be able to offer the TiVo service to our TiVo-Owned customers. Furthermore, if we are unable to differentiate the TiVo service from the TiVo-branded DVR solutions offered by our licensing partners, customers who would have otherwise chosen the TiVo service may instead choose to purchase the TiVo-branded DVR solution from our licensing partners. Additionally, to the extent that potential customers defer subscribing to the TiVo service in order to wait for announced, but not yet deployed in their geographic area, TiVo-branded DVR solutions from our licensing partners, such as Comcast and Cox, the growth of our TiVo-Owned subscriptions could be reduced. If the growth in our TiVo-Owned subscriptions is reduced, our business could be harmed.

*It is expensive to establish a strong brand.* We believe that establishing and strengthening the TiVo brand is critical to achieving widespread acceptance of our products and services and to establishing key strategic relationships. The importance of brand recognition will increase as current and potential competitors enter the digital video recorder market with competing products and services. Our ability to promote and position our brand depends largely on the success of our marketing efforts and our ability to provide high quality services and customer support. These activities are expensive and we may not generate a corresponding increase in subscriptions or revenues to justify these costs. If we fail to establish and maintain our brand, or if our brand value is damaged or diluted, we may be unable to attract subscriptions and effectively compete in the digital video recorder market.

*We rely on our retail customers and service providers to market and distribute our products and services.* In addition to our own efforts, our retail customers distribute DVRs that enable the TiVo service. We rely on their sales forces, marketing budgets and brand images to promote and support DVRs and the TiVo service. Additionally, we now depend on service providers, such as Comcast to market and promote the TiVo service. We expect to continue to rely on our relationships with these companies to promote and support DVRs and other devices that enable the TiVo service. The loss of one or more of these companies could require us to undertake more of these activities on our own. As a result, we would spend significant resources to support the TiVo service and DVRs and other devices that enable the TiVo service. The failure of one or more of these companies to provide anticipated marketing support will require us to divert more of our limited resources to marketing the TiVo service. If we are unable to provide adequate marketing support for DVRs and the TiVo service, our ability to attract subscriptions to the TiVo service will be limited.

*Many consumers are not aware of the benefits of our products.* DVR products and services represent a relatively new consumer electronics category. Retailers, consumers, and potential partners may perceive little or no benefit from digital video recorder products and services. We have only been providing the TiVo service since 1999. Many consumers are not aware of its benefits, and therefore may not value the TiVo service and products that enable the TiVo service. We will need to continue to devote a substantial amount of time and resources to educate consumers and promote our products in order to increase our subscriptions. We cannot be sure that a broad base of consumers will ultimately subscribe to the TiVo service or purchase the products that enable the TiVo service.

### **We face risks, such as increased churn of our subscription base and decrease in future new subscriptions, in connection with the transition from analog to digital broadcast transmission in June 2009**

On June 12, 2009, the nation's full power television stations will begin transmitting in all-digital broadcast signals and no longer use the traditional analog method of broadcasting over-the-air television. Only those consumers who currently receive analog television over-the-air or via an antenna will be impacted by this transition. Consumers accessing pay television service such as cable or satellite are not likely to be immediately affected by the switch. However, consumer confusion around the transition to digital broadcast signals poses risks to our business from consumers mistakenly believing their TiVo DVR is not compatible with the digital transition in 2009.



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**We face risks associated with various cable operators making their own transition to digital transmission of cable signals.**

We face increased risks in addition to the 2009 digital transition as cable operators are currently only required to carry analog signals for customers through February 2012 where cable operators transmit in both analog and digital formats. Cable operators who transmit entirely in digital format to their customers and make set top boxes available to such customers are exempted from the dual carriage mandate. Our business faces increased risks as cable operators convert their systems to transmit in all digital format because our dual tuner standard definition Series2 DVR is reduced to a single tuner experience when used exclusively with a cable set top box and no analog cable transmission is available. The lack of an analog signal being transmitted by the cable operator means that the DVR would only be able to use one tuner to record television although we do currently offer to our customers a high definition digital video recorder, the TiVo HD DVR, which is CableCARD capable and not subject to this risk. In the event that the features and functionality of our Series2 DVRs currently deployed with customers or which are otherwise for sale to customers are impacted, such an impact may cause such customers to cancel their subscriptions or not purchase a standard definition Series2 DVR. The migration of cable systems to all digital transmissions could result in increased customer churn or deter new customers from subscribing to the TiVo service, and in such an event our business would be harmed.

**If we are unable to create or maintain multiple revenue streams, we may not be able to cover our expenses and this could cause our revenues to suffer.**

*Our long-term success depends on our ability to generate revenues from multiple revenue streams.* Our long-term success will depend on securing additional revenue streams such as:

licensing;

advertising;

audience research measurement;

revenues from programmers; and

electronic commerce.

In order to derive substantial revenues from these activities, we will need to attract and retain a large and growing base of subscriptions to the TiVo service. We also will need to work closely with television advertisers, cable, satellite, and telecommunications network operators, electronic commerce companies, and consumer electronics manufacturers to develop products and services in these areas. We may not be able to work effectively with these parties to develop products that generate revenues that are sufficient to justify their costs. We also may be unable to work with, or to continue working with, these parties to distribute video and collect and distribute data or other information to provide these product or services. In addition, we are currently obligated to share a portion of these revenues with several of our strategic partners. Any inability to attract and retain a large and growing group of subscriptions or inability to attract new strategic partners or maintain and extend our relationships with our current strategic partners could seriously harm our ability to support new services and develop new revenue streams.

**We face risks in connection with our licensing and marketing agreements with Comcast and Cox for the development and deployment of a TiVo-branded DVR software solution and advertising management system to Comcast and Cox customers.**

*We may not be successful in our agreements with Comcast and Cox.* We face significant technological challenges in our development of the TiVo service software solution and the TiVo advertising management system for Comcast and Cox. If we are unable to successfully develop these products in a timely and efficient manner and enable mass deployment of them by Comcast and Cox, we may not be successful in our relationships with them and our business could be harmed. Our ability to benefit from our agreements with Comcast and Cox are dependent upon the mass-deployment and adoption of the TiVo service software solution by Comcast and Cox customers. Additionally, our ability to benefit from our agreements with Comcast and Cox are dependent upon our ability to successfully sell advertising to third parties. Furthermore, Comcast and Cox each have the right to receive certain most favored terms from us such that if we were to license similar products and services to other parties at more attractive terms than what Comcast or Cox receive under their respective agreements with us, they may be entitled to

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receive the new more favorable terms. Additionally, Comcast and Cox each have the right to terminate its agreement with us in the event we are subject to certain specified change of control transactions involving companies specified in their respective agreements. In the event any of these events occurred, we would have difficulty generating revenues under these agreements and our business could be harmed.

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To attract and retain subscriptions and generate revenues, we must continue to maintain and add to our functionality and content and introduce products and services which embody new technologies and, in some instances, new industry standards. This challenge will require hardware and software improvements, as well as maintaining and adding new collaborations with programmers, advertisers, network operators, hardware manufacturers, and other strategic partners. These activities require significant time and resources and may require us to develop and promote new ways of generating revenue with established companies in the television industry. These companies include television advertisers, cable and satellite network operators, electronic commerce companies, and consumer electronics manufacturers. In each of these examples, a small number of large companies dominate a major portion of the market and may be reluctant to work with us to develop new products and services for digital video recorders as well as maintain our current functionality. If we are unable to maintain and further develop and improve the TiVo service or maintain and expand our operations in a cost-effective or timely manner, our ability to attract and retain customers and generate revenue will suffer.

**We face competitive risks in the provision of an entertainment offering involving the distribution of digital content through broadband, including from broadband devices connected directly to the TV or through a PC connected to the TV.**

Over the past two years we launched joint entertainment offerings with the Amazon Video on Demand (formerly Unbox) service, Netflix, CinemaNow, and Jaman for the distribution of digital content directly to broadband-connected TiVo DVRs. Our offerings with Amazon Video On Demand, Netflix, CinemaNow, and Jaman involve no significant long-term commitments. We face competitive, technological, and business risks in our on-going provision of an entertainment offering involving the distribution of digital content through broadband to consumer televisions with Amazon, Netflix, and others, including availability of premium content and speed and quality of the delivery, including the availability of high definition content in the future, of such content to TiVo DVRs. For instance, we face increased competition from a growing number of broadband-enabled devices from providers such as Roku and Vudu which provide broadband delivered digital content directly to a consumer's television connected to such a device. Additionally, we face competition from online content providers and other PC software providers who deliver digital content directly to a consumer's personal computer, which in some cases may then be viewed on a consumer's television. If we are unable to provide a competitive entertainment offering with Amazon Video On Demand, Netflix, Blockbuster, and our other partners, on our own, or an equivalent offering with another third party, the attractiveness of the TiVo service to new subscribers could be harmed as consumers increasingly look for new ways to receive and view digital content and our ability to retain and attract subscribers could be harmed.

**Our ability to retain our current customers may continue to decrease in the future which could increase our TiVo-Owned subscription monthly churn rate and could cause our revenues to suffer.**

We believe factors such as increased competition in the DVR marketplace, changing television technologies such as the increasing penetration of high definition, the use of switched digital technology to deliver encrypted digital television signals, and the failure of cable operators in the future to transmit both an analog and digital transmission thus impacting our Series2 DVRs, increased price sensitivity in the consumer base, any deterioration in the quality of our service, and product lifetime subscriptions no longer using our service may cause our TiVo-Owned subscription monthly churn rate to increase. If we are unable to retain our subscriptions by limiting the factors that we believe increase subscription churn, our ability to grow our subscription base could suffer and our revenues could be harmed.

**If we fail to manage the growth and complexity of our activities, it could disrupt our business and impair our ability to generate revenues.**

The growth in our subscription base and increasing complexity of our sources of other revenue have placed, and will continue to place, a significant strain on our management, operational and financial resources and systems. Specific risks we face as our business expands include:

*Any inability of our systems to accommodate our expected subscription growth, or any inability of our TiVo.com website to handle expected customer traffic, may cause service interruptions or delay our introduction of new services and limit our ability to sell the TiVo service and TiVo-enabled DVRs.* We internally developed many of the systems we use to provide the TiVo service and perform other processing functions. The ability of these systems to scale as we add new subscriptions is unproven. We must continually improve these systems to accommodate subscription growth and to add features and functionality to the TiVo service. Our inability to add software and hardware or to upgrade our technology, systems or network infrastructure could adversely affect our business, cause service interruptions or delay the introduction of new services. Our inability to manage customer traffic and sales volume through our TiVo.com website could limit our ability to sell the TiVo service and TiVo-enabled DVRs in the future. If our website were to become unavailable for a significant amount of time, our ability to provide certain features of the TiVo service and our ability to service customers and sell the TiVo service and TiVo-enabled DVRs would be harmed.



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*We will need to provide acceptable customer support, particularly with respect to installation of DVRs and CableCards, and any inability to do so would harm our brand and ability to retain current subscriptions and generate new subscriptions.* Our ability to increase sales, retain current and future subscriptions and strengthen our brand will depend in part upon the quality of our customer support operations, including our ability to assist customers with installation and CableCard-related issues. Some customers require significant support when installing the DVR and required CableCards for our HD DVRs and becoming acquainted with the features and functionality of the TiVo service. We have limited experience with widespread deployment of our products, services, and CableCard installation requirements to a diverse customer base, and we may not have adequate personnel to provide the levels of support that our customers require. In addition, we have entered into agreements with third parties to provide this support and will rely on them for a substantial portion of our customer support functions. Furthermore, the installation of CableCards for TiVo customers is performed by third party cable operators and TiVo is dependent on such parties to timely service new subscribers to enable their receipt of digital and premium cable content. Our failure to provide adequate customer support for the TiVo service, DVRs, and CableCards will damage our reputation in the digital video recorder and consumer electronics marketplace and strain our relationships with customers and consumer electronics manufacturers. This could prevent us from gaining new or retaining existing subscriptions and could cause harm to our reputation and brand.

*We will need to improve our operational and financial systems to support our expected growth, increasingly complex business arrangements, and rules governing revenue and expense recognition and any inability to do so will adversely affect our billing and reporting.* We have increasingly complex business arrangements, and the rules which govern revenue and expense recognition in our business are increasingly complex as well. To manage the expected growth of our operations and increasing complexity, we will need to improve our operational and financial systems, procedures and controls and continue to increase systems automation to reduce reliance on manual operations. Any inability to do so will affect our billing and reporting. Our current and planned systems, procedures and controls may not be adequate to support our complex arrangements and the rules governing revenue and expense recognition for our future operations and expected growth. Delays or problems associated with any improvement or expansion of our operational and financial systems and controls could adversely affect our relationships with our customers; cause harm to our reputation and brand; and could also result in errors in our financial and other reporting.

**If we fail to adequately manage our increasingly complex licensing, development, and engineering services agreements, we could be subjected to unexpected costs and incur losses which could adversely affect our business.**

We engage in licensing, development, and engineering services agreements with our customers, such as Comcast, Cox, and DIRECTV. These types of contracts are typically long-term and complex. The engineering services we agree to provide may be essential to the functionality of the licensed software or such software may involve significant customization and modification. We believe we are able to make reasonably dependable cost estimates based on historical experience and various other assumptions. These estimates are assessed continually during the term of the contract and revisions are reflected when the conditions become known. Using different cost estimates related to engineering services may produce materially different results for related expenses and revenues. A favorable change in estimates in a period could result in additional revenue and profit, and an unfavorable change in estimates could result in a reduction of revenue and profit or the recording of a loss that would be borne solely by us. Any inability to properly manage, estimate, and perform these development and engineering services for our customers could cause us to incur unexpected losses and reduce or even eliminate any profit from these arrangements, and in such a case our business would be harmed.

**We must manage product transitions successfully in order to remain competitive.**

The introduction of a new product or product line is a complex task, involving significant expenditures in research and development, training, promotion and sales channel development, and management of existing product inventories to reduce the cost associated with returns and slow moving inventory. As new products are introduced, we intend to monitor closely the inventory of products to be replaced, and to phase out their manufacture in a controlled manner. However, we cannot assure you that we will be able to execute product transitions in this manner or that product transitions will be executed without harming our operating results. Failure to develop products with required features and performance levels or any delay in bringing a new product to market could significantly reduce our revenues and harm our competitive position.

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**The product lifetime subscriptions to the TiVo service that we currently are obligated to service commit us to providing services for an indefinite period. The revenue we generate from these subscriptions may be insufficient to cover future costs and will negatively impact our TiVo-Owned Average Revenue per Subscription.**

We offer a product lifetime subscription option to the TiVo service that commits us to provide the TiVo service for as long as the DVR is in service. We received the product lifetime subscription fee for the TiVo service in advance and amortize it as subscription revenue over 60 months for product lifetime subscriptions which is our current estimate of the service life of the DVR. If these product lifetime subscriptions use the DVR for longer than anticipated, we will incur costs such as telecommunications and customer support costs without a corresponding subscription revenue stream and therefore will be required to fund ongoing costs of service from other sources. Additionally, if these product lifetime subscriptions use the DVR for longer than the period in which we recognize revenue, our average revenues per subscription (ARPU) for our TiVo-Owned subscriptions will be negatively impacted as we continue to count these customers as subscriptions without corresponding subscription revenue thus lowering our average revenues across our TiVo-Owned subscription base. As of January 31, 2009, we had approximately 225,000 product lifetime subscriptions that had exceeded the 60 month period we use to recognize product lifetime subscription revenues and had made contact with the TiVo service within the prior six-month period. This represents approximately 34% of our cumulative lifetime subscriptions as compared to 26% in fiscal year ended January 31, 2008. We will continue to monitor the useful life of a TiVo-enabled DVR and the impact of higher churn, increased competition, and compatibility of our existing TiVo units with high-definition programming. Future results will allow us to determine if our useful life is shorter or longer than currently estimated, in which case we may revise the estimated life and we would recognize revenues from this source over a shorter or longer period.

**We share a substantial portion of the revenue we generate from subscription fees with some of our retail customers and consumer electronics companies. We may be unable to generate enough revenue to cover these obligations.**

In some of our agreements, we have agreed to share a substantial portion of our subscription and other fees with some of our retail customers and consumer electronics manufacturing companies in exchange for manufacturing, distribution and marketing support, and discounts on key components for DVRs. These agreements require us to share substantial portions of the subscription and other fees attributable to the same subscription with multiple companies. These agreements also require us to share a portion of our subscription fees whether or not we increase or decrease the price of the TiVo service. If we change our subscription fees in response to competitive or other market factors, our operating results would be adversely affected. Our decision to share subscription revenues is based on our expectation that these relationships will help us obtain subscriptions, broaden market acceptance of digital video recorders, and increase our future revenues. If these expectations are not met, we may be unable to generate sufficient revenue to cover our expenses and obligations.

**We advertise, market, and sell our services directly to consumers; many of these activities are highly regulated by constantly evolving state and federal laws and regulations and violations of these laws and regulations could harm our business.**

We engage in various advertising, marketing, and other promotional activities, such as offering gift subscriptions to consumers, which are subject to state and federal laws and regulations. A constantly evolving network of state and federal laws is increasingly regulating these promotional activities. Additionally, we enter into subscription service contracts directly with consumers which govern both our provision of and the consumers' payment for the TiVo service. For example, consumers who activate new monthly subscriptions to the TiVo service are required to commit to pay for the TiVo service for a minimum of one year or be subject to an early termination fee equal to the number of months left unpaid on their commitment if they terminate prior to the expiration of their commitment period. If the terms of our subscription service contracts with consumers, such as our imposition of an early termination fee, or our previously offered rebate or gift subscription programs were to violate state or federal laws or regulations, we could be subject to suit, penalties, and/or negative publicity in which case our business could be harmed.

**The nature of some of our business relationships may restrict our ability to operate freely in the future.**

From time to time, we have engaged and may engage in the future in discussions with other parties concerning business relationships, which have and may include equity investments by such parties in our Company. While we believe that such business relationships have historically enhanced our ability to finance and develop our business model, the terms and conditions of such business relationships may place some restrictions on the operation of our business in the future.

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**Table of Contents****Entertainment companies and other content owners may claim that some of the features of our DVRs violate copyright or trademark laws, which could force us to incur significant costs in defending such actions and affect our ability to market the TiVo service and the products that enable the TiVo service.**

Although we have not been the subject of such actions to date, a past competitor's digital video recorders were the subject of several copyright infringement lawsuits by a number of major entertainment companies, including the major television networks. These lawsuits alleged that the competitor's digital video recorders violate copyright laws by allowing users to skip commercials, delete recordings only when instructed and use the Internet to send recorded materials to other users. TiVo-enabled DVRs have some similar features, including the ability to fast-forward through commercials, the ability to delete recordings only when instructed and the ability to transfer recordings from a TiVo-enabled DVR to a PC and/or portable media devices via TiVoToGo transfers. Based on market or consumer pressures, we may decide in the future to add additional features that may be objectionable to entertainment companies. If similar actions are filed against us based on current or future features of our DVRs, entertainment companies may seek injunctions to prevent us from including these features and/or damages. Such litigation can be costly and may divert the efforts of our management. Furthermore, if we were ordered to remove features from our DVRs, we may experience increased difficulty in marketing the TiVo service and related TiVo-enabled DVRs and may suffer reduced revenues as a result.

**Entertainment companies, networks, or video distributors may claim that our advertising products or features may unintentionally violate copyright or trademark laws or otherwise unfairly compete with them, which could result in the blocking, stripping or failure to carry out our advertising products or features or force us to incur significant costs in defending such actions and affect our ability to generate advertising revenues.**

Entertainment companies, networks, or video distributors may claim that our advertising products or features may unintentionally violate copyright or trademark laws, or otherwise unfairly compete with them, by being placed within, adjacent to, or on top of, existing video programming or advertising. Entertainment companies or video distributors may seek injunctions to prevent us from offering these products or features, seek damages and/or take other measures, such as blocking, stripping or refusing carriage to prevent us from selling or distributing our advertising products. If we were unable to sell or distribute our advertising products or features on our DVRs, we may suffer reduced revenues as a result.

**Our success depends on our ability to secure and protect our patents, trademarks, and other proprietary rights.**

Our success and ability to compete are substantially dependent upon our internally developed technology. We rely on patent, trademark and copyright law, trade secret protection and confidentiality or license agreements with our employees, customers, partners and others to protect our intellectual property rights. However, the steps we take to protect our proprietary rights may be inadequate. We have filed patent applications and provisional patent applications covering substantially all of the technology used to deliver the TiVo service and its features and functionality. To date, several of these patents have been granted, but we cannot assure you that any additional patents will ever be granted, that any issued patents will protect our intellectual property or that third parties will not challenge any issued patents. In addition, other parties may independently develop similar or competing technologies designed around any patents that may be issued to us. Our failure to secure and protect our proprietary rights could have a material adverse effect on our business.

**We could be prevented from selling or developing our TiVo software if the GNU/Linux operating system is held to infringe third party intellectual property rights or if the GNU General Public License governing the GNU/Linux operating system and Linux kernel and similar licenses under which our product is developed and licensed are not enforceable or are interpreted broadly.**

Our TiVo software includes parts of the Linux kernel and the GNU/Linux operating system. The Linux kernel and the GNU/Linux operating system have been developed and licensed under the GNU General Public License, version 2 and similar open-source licenses. The software we have licensed under these open-source licenses is provided without warranties or indemnities from the licensor. Uncertainty concerning potential allegations by third parties that their intellectual property rights are violated by TiVo's use of such open-source software, regardless of their merit, could adversely affect our manufacturing relationships and other customer and supplier relationships. If any claims of intellectual property infringement are brought against TiVo based on our use of open-source software, we could be required to seek licenses from third parties in order to continue offering our solutions, to re-engineer our solutions, or to discontinue the sale of our solutions in the event re-engineering cannot be accomplished on a timely basis, any of which would adversely affect our business. The GNU General Public License and certain other open-source licenses require that licensees, including TiVo, make the source code of any derivative works of the software licensed under the open-source license available in source code form. Given the ambiguous drafting in many of these open-source licenses regarding the definition of derivative work, it is possible that third parties may claim that our proprietary TiVo software, or a portion

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thereof, that runs on a GNU/Linux-based operating system is a derivative work of the open-source software and should be made available in source code form to all of our customers. This would reduce the value of our proprietary software and would negatively affect our business. Finally, there is very little case law interpreting open-source licenses. Any ruling by a court that these licenses are not enforceable, or that GNU/Linux-based operating systems, or significant portions of them, may not be liberally copied, modified or distributed, would have the effect of preventing us from selling or developing our TiVo software and would adversely affect our business.

In addition, a version of the GNU General Public License (GPL v3) was recently released that contains terms that restrict the manner in which hardware manufacturers may use software licensed under the GPL v3. If such terms are broadly interpreted and the GPL v3 is widely adopted among the Linux developer community, we may be unable to incorporate future enhancements to the GNU/Linux operating system into our software, which could adversely affect our business.

**If there is an adverse outcome in the class action litigation that has been filed against us, our business may be harmed.**

We are named as defendants in a consolidated securities class action lawsuit filed in the U.S. District Court for the Southern District of New York. This class action was brought on behalf of a purported class of purchasers of the Company's common stock from October 31, 1999, the time of its initial public offering, through December 6, 2000. The central allegation in this action is that the underwriters in the initial public offering solicited and received undisclosed commissions from, and entered into undisclosed arrangements with certain investors who purchased TiVo common stock in the initial public offering and the after-market. The complaint also alleges that the TiVo defendants violated the federal securities laws by failing to disclose in the initial public offering prospectus that the underwriters had engaged in these alleged undisclosed arrangements. More than 300 issuers have been named in similar lawsuits. The Company intends to defend this action vigorously; however, we could be forced to incur material expenses in the litigation, and in the event there is an adverse outcome, our business could be harmed. For more information on this litigation please see our discussion under Item 3. Legal Proceedings.

**Legislation, laws or regulations that govern the consumer electronics and television industry, the delivery of programming, access to television signals, and the collection of viewing information from subscriptions could expose us to legal action if we fail to comply and could adversely impact and/or could require us to change our business.**

The delivery of television programming, access to television signals by consumer electronics devices, and the collection of viewing information from subscriptions via the TiVo service and a DVR represent a relatively new category in the television and home entertainment industries. As such, it is difficult to predict what laws or regulations will govern our business. Changes in the regulatory climate, the enactment of new legislation, or the expansion, contraction, enforcement or interpretation of existing laws or regulations could expose us to additional costs and expenses and could adversely impact or require changes to our business. For example, legislation regarding customer privacy or copyright could be enacted or expanded to apply to the TiVo service, which could adversely affect our business. Laws or regulations could be interpreted to prevent or limit access to some or all television signals by certain consumer electronics devices, or impose limits on the number of copies, the ability to transfer or move copies, or the length of time a consumer may retain copies of some or all types of television programming. New or existing copyright laws could be applied to restrict the capture of television programming, which would adversely affect our business. It is unknown whether existing laws and regulations will apply to the digital video recorder market. Therefore, it is difficult to anticipate the impact of current or future laws and regulations on our business. We may have significant expenses associated with staying apprised of local, state, federal, and international legislation and regulation of our business and in presenting TiVo's positions on proposed laws and regulations.

The Federal Communications Commission, or FCC, has broad jurisdiction over the telecommunications and cable industries. The FCC could promulgate new regulations, or interpret existing regulations in a manner that would cause us to incur significant compliance costs or force us to alter or eliminate certain features or functionality of the TiVo products or services which may adversely affect our business. For example, the FCC could determine that certain of our products fail to comply with regulations concerning matters such as electrical interference, copy protection, digital tuners, or display of television programming based on rating systems. The FCC could also impose limits on the number of copies, the ability to transfer or move copies, the length of time a consumer may retain copies, or the ability to access some or all types of television programming.



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**If there is increased use of switched digital video technologies to transmit television programs by cable operators (also known as switched digital) in the future, the desirability and competitiveness of our current products could be reduced in which case our business would be harmed.**

We rely on conditional access security cards supplied by cable operators called CableCARDS for certain types of our DVRs to receive encrypted digital television signals without a cable operator supplied set-top box. These DVRs presently are limited to using CableCARDS to access digital cable, High Definition, and premium cable channels like HBO that are delivered in a linear fashion where all programs are broadcast to all subscribers all the time. Certain cable operators are beginning to test and deploy switched digital video technologies to transmit television programs in a non-linear fashion (switched digital) only to subscribers who request to watch a particular program. Although cable operators have started to deploy a solution to enable our customers to receive channels delivered with switched technologies (known as the Tuning Adapter), if this technology is not successful or is not adopted by our customers (due to cost, complexity, or functionality), then the increased use of switched technologies and the continued inability of our products to receive switched cable programming without a Tuning Adapter may reduce the desirability and competitiveness of our products and services and adversely affect sales of our TiVo-Owned subscriptions in which case our business would be harmed.

**Uncertainty and adverse changes in the economy could have an adverse impact on our business and operating results.**

Uncertainty or adverse changes in the economy could lead to a significant decline in discretionary consumer spending, which, in turn, could result in a decline in the demand for the TiVo service and TiVo-enabled DVRs. As a result of the recent national and global economic downturn, overall consumer spending has declined. Retailers in North America appear to be taking a more conservative stance in ordering electronics inventory and consumers as well appear to be taking a more conservative stance in discretionary purchases, including TiVo DVRs and service subscriptions. Any decrease in demand for our products, particularly during the critical holiday selling season, could have an adverse impact on our operating results and financial condition. Uncertainty and adverse changes in the economy could also increase the risk of losses on our investments, increase costs associated with developing and producing our products, increase our churn rate per month, increase the cost and decrease the availability of potential sources of financing, and increase our exposure to losses from bad debts, any of which could have an adverse impact on our financial condition and operating results.

**Our business could be adversely impacted in the event of a natural disaster.**

Our corporate headquarters is located in Alviso, California which is where the overwhelming majority of our employees work. Our primary servers are located nearby in San Jose, California. Alviso and San Jose lay near the San Andreas Fault, among other known and unknown faults, a major source of earthquake activity in California. In the event of an earthquake or similar natural disaster, our ability to continue operations could be adversely affected and our business could be harmed.

**Legislation, laws or regulations relating to environmental issues, employment matters, and unclaimed property may adversely impact our business in the future.**

It is possible that future proposed environmental regulations on consumer electronic devices, such as DVRs and set-top boxes, may regulate and increase the production, manufacture, use, and disposal costs incurred by us and our customers. For example, the Energy Independence and Security Act of 2007 directs the Department of Energy to prescribe labeling or other disclosure requirements for the energy use of stand-alone digital video recorder boxes. This and future energy regulations could potentially make it more costly for us to design, manufacture, and sell our DVRs to our customers thus harming the growth of our business.

Additionally, as our business grows and we expand our employed and contracted work force, employment laws and regulations will have an increasing impact on our ability to manage and grow our work-force. Regulations and laws relating to the status of contractors, classification and related benefits for exempt and non-exempt employees all may adversely impact our business if we are unable to properly manage and comply with federal, state, and local laws.

Furthermore, as part of our regular business activities now, and in the past, we engage in the issuance of gift subscriptions and the marketing of rebate offers related to the sale of our products and services. It is possible that money received by us for the sale of gift subscriptions or related to our past rebate offers could be subject to state and federal escheat, or unclaimed property, laws in the future. If this were the case, our business could be adversely impacted.

**If we fail to comply with the laws and regulations relating to the collection of sales tax and payment of income taxes in the various States in which we do business, we could be exposed to unexpected costs, expenses, penalties, and fees as a result of our noncompliance in which case our business could be harmed.**

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As our business grows and expands, we have started to do business in an increasing number of states nationally. By engaging in business activities in these states, we become subject to their various laws and regulations, including requirements to collect sales tax from our sales within those states and the payment of income taxes on revenue

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generated from activities in those states. The laws and regulations governing the collection of sales tax and payment of income taxes are numerous, complex, and vary between states. If we fail to comply with these laws and regulations requiring the collection of sales tax and payment of income taxes in one or more states where we do business, we could be subject to significant costs, expenses, penalties, and fees in which case our business could be harmed.

### **Compliance with federal securities laws and regulations is costly.**

The federal securities laws and regulations, including the corporate governance and other requirements of the Sarbanes-Oxley Act of 2002 impose complex and continually changing regulatory requirements on our operations and reporting. These requirements impose comprehensive reporting and disclosure requirements, set stricter independence and financial expertise standards for audit committee members, and impose civil and criminal penalties for companies, their chief executive officers, chief financial officers and directors for securities law violations. These requirements have increased and will continue to increase our legal compliance costs, increase the difficulty and expense in obtaining director and officer liability insurance, and make it harder for us to attract and retain qualified members of our Board of Directors and/or qualified executive officers. Such developments could harm our results of operations and divert management's attention from business operations.

### **Our business could be adversely impacted if we have deficiencies in our disclosure controls and procedures or internal control over financial reporting.**

The design and effectiveness of our disclosure controls and procedures and internal control over financial reporting may not prevent all errors, misstatements or misrepresentations. While management continues to review the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we can not assure you that our disclosure controls and procedures and internal control over financial reporting will be effective in accomplishing all control objectives all of the time. Deficiencies, particularly a material weakness in internal control over financial reporting, which may occur in the future could result in misstatements of our results of operations, restatements of our financial statements, a decline in our stock price, the delisting of our common stock from the Nasdaq Global Market, or otherwise materially adversely affect our business, reputation, results of operation, financial condition or liquidity.

### **The nature of our business requires the application of complex revenue and expense recognition rules and the current legislative and regulatory environment affecting U.S. Generally Accepted Accounting Principles (GAAP) is uncertain and volatile, and significant changes in current principles could affect our financial statements going forward.**

The accounting rules and regulations that we must comply with are complex and continually changing. Recent actions and public comments from the Securities Exchange Commission have focused on the integrity of financial reporting generally. In addition, many companies accounting policies are being subject to heightened scrutiny by regulators and the public. While we believe that our financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, we cannot predict the impact of future changes to accounting principles or our accounting policies on our financial statements going forward. In addition, were we to change our critical accounting estimates, including the timing of recognition of revenue from our product lifetime subscriptions, our results of operations could be significantly impacted.

### **Negative conditions in the global credit markets may impair the liquidity of a portion of our investment portfolio.**

Our long-term investment securities represent approximately 3% of our total cash, cash equivalent, short-term and long-term investments. These investment securities consist of investment-grade auction rate securities. As of March 23, 2009, our long-term investments included approximately \$5.0 million of investment-grade auction rate securities issued by education finance companies, on which we have recorded unrealized losses of approximately \$1.1 million as of January 31, 2009. Our auction rate securities are debt instruments with a long-term maturity and an interest rate that is reset in short intervals through auctions. The recent conditions in the global credit markets have prevented us from liquidating our holdings of auction rate securities because the amount of securities submitted for sale has exceeded the amount of purchase orders for such securities. If there is insufficient demand for the securities at the time of an auction, the auction may not be completed and the interest rates may be reset to predetermined higher rates. Although to date, we have not recorded any realized gains or losses on our investment portfolio, when auctions for these securities fail, the investments may not be readily convertible to cash until a future auction of these investments is successful or they are redeemed or mature. If the financial health of the security issuers deteriorate and any decline in market value is determined to be other-than-temporary, we would be required to adjust the carrying value of the investment through an impairment charge.

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**We and the third party vendors we work with will need to remain compliant with the Payment Card Industry requirements for security and protection of customer credit card information and an inability to do so by us or our third party vendors will adversely affect our business.**

As a merchant who processes credit card payments from its customers, we are required to comply with the payment card industry requirements imposed on us for the protection and security of our customers' credit card information. If we are unable to successfully remain compliant with the payment card industry requirements imposed on us as a credit card merchant, our business could be harmed because we could be prevented in the future from transacting customer subscription payments by means of a credit card.

**We need to safeguard the security and privacy of our subscribers' confidential data, and any inability to do so may harm our reputation and brand and expose us to legal action.**

*The DVR collects and stores viewer preferences and other data that many of our customers consider confidential.* Any compromise or breach of the encryption and other security measures that we use to protect this data could harm our reputation and expose us to potential liability. Advances in computer capabilities, new discoveries in the field of cryptography, or other events or developments could compromise or breach the systems we use to protect our subscribers' confidential information. We may be required to make significant expenditures to protect against security breaches or to remedy problems caused by any breaches.

*Uncertainty in the marketplace regarding the use of data from subscriptions could reduce demand for the TiVo service and result in increased expenses.* Consumers may be concerned about the use of viewing information gathered by the TiVo service and the DVR. Currently, we gather anonymous information about our customers' viewing choices while using the TiVo service, unless a customer affirmatively consents to the collection of personally identifiable viewing information. This anonymous viewing information does not identify the individual customer. Privacy concerns, however, could create uncertainty in the marketplace for digital video recording and for our products and services. Changes in our privacy policy could reduce demand for the TiVo service, increase the cost of doing business as a result of litigation costs or increased service delivery costs, or otherwise harm our reputation and business.

**We are subject to the Foreign Corrupt Practices Act (FCPA), and our failure to comply with the laws and regulations there under could result in penalties which could harm our reputation, business, and financial condition.**

We are subject to the FCPA, which generally prohibits companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or keeping business. The FCPA also requires companies to maintain adequate record-keeping and internal accounting practices to accurately reflect the transactions of the Company. Under the FCPA, U.S. companies may be held liable for actions taken by their strategic or local partners or representatives. The FCPA and similar laws in other countries can impose civil and criminal penalties for violations.

If we do not properly implement practices and controls with respect to compliance with the FCPA and similar laws, or if we fail to enforce those practices and controls properly, we may be subject to regulatory sanctions, including administrative costs related to governmental and internal investigations, civil and criminal penalties, injunctions and restrictions on our business activities, all of which could harm our reputation, business and financial condition.

**We face significant risks in overseeing our outsourcing of manufacturing processes as well as in the management of our inventory, and failure to properly oversee our manufacturing processes or to effectively manage our inventory levels may result in product recalls or supply imbalances that could harm our business.**

We have contracted for the manufacture of certain TiVo-enabled DVRs with a contract manufacturer. We sell these units to retailers and distributors, as well as through our own online sales channels. Product manufacturing is outside our core business and we face significant risks if our contract manufacturer does not perform as expected. If we fail to effectively oversee the manufacturing process, including the work performed by our contract manufacturer, we could suffer from product recalls, poorly performing product, and higher than anticipated warranty costs.

In connection with our manufacturing operations, we maintain a finished goods inventory of the DVR units we produce throughout the year. Due to the seasonality in our business and our long-lead time product development and manufacturing cycles, we need to make forecasts of demand and commit significant resources towards manufacturing of our DVR units well in advance of our peak selling periods. As such, we are subject to significant risks in managing the inventory needs of our business during the year, including estimates of the appropriate mix of demand across our older and newer DVR models. For example, due to lower than expected sales of standard definition DVRs and the resulting changes in our sales forecast, in the fiscal year ended January 31, 2008 we recorded an inventory related charge of \$6.4 million for excess raw

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materials, finished goods inventory, and non-cancelable purchase commitments. Subsequently, the actual sales of our standard definition DVRs exceeded our expectations and we utilized approximately \$4.9 million of

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previously impaired inventory during the fiscal year ended January 31, 2009. If we were to over estimate demand for our DVRs, we may end up with inventories that exceed currently forecasted demand which would require us to record additional write-downs. Should actual market conditions differ from the Company's estimates, the Company's future results of operations could be materially affected. In the future, we may be required to record additional write-downs of finished products and materials on-hand and/or additional charges for excess purchase commitments as a result of future changes in our sales forecasts.

**We have limited experience and face significant competition in providing service and operations internationally that are subject to different competitors, laws, regulations, and requirements than those in the United States and our inability to compete or comply with such laws, regulations, and requirements could harm our reputation, brand, and have a negative impact on revenues.**

We have provided and expect to continue to provide the TiVo service in jurisdictions outside of the United States, including the United Kingdom, Mexico, Canada, Australia and in the future New Zealand. We have limited experience in international operations. We face significant competition and technological challenges in competing with other consumer electronics manufacturers in these jurisdictions and in complying with international laws and technological standards such as the various digital over-the-air standards like DVB-T. If we are unable to properly manage our international operations or comply with international laws, regulations, and requirements, we could suffer damage to our reputation, brand, and revenues and as a result our business could be harmed. We have and expect to continue to partner with local broadcasters, cable television operators, and satellite providers to provide the TiVo service internationally. Transactions with international partners may never materialize or may not result in significant revenue for us and may result in significant costs.

**We face significant risks to our business when we engage in the outsourcing of engineering work which, if not properly managed, could result in the loss of valuable intellectual property which could harm our business.**

We have from time-to-time outsourced engineering work related to the design, development, and manufacturing of our products. We have and expect to in the future work with companies located in jurisdictions outside of the United States, including, but not limited to, China, India, Ukraine, and Mexico. We have limited experience in the outsourcing of engineering, manufacturing and other work to third parties located internationally that operate under different laws and regulations than those in the United States. If we are unable to properly manage and oversee the outsourcing of this engineering, manufacturing and other work related to our products, we could suffer the loss of valuable intellectual property, including patents, trademarks, trade secrets, and copyrights and as a result our business could be harmed.

**Product defects, system failures, or interruptions to the TiVo service may have a negative impact on our revenues, damage our reputation and decrease our ability to attract new customers.**

Our ability to provide uninterrupted service and high quality customer support depends on the efficient and uninterrupted operation of our computer and communications systems. Our computer hardware and other operating systems for the TiVo service are vulnerable to damage or interruption from earthquakes, floods, fires, power loss, telecommunication failures and similar events. They are also subject to break-ins, sabotage, intentional acts of vandalism and similar misconduct. These types of interruptions in the TiVo service may reduce our revenues and profits. We currently house the server hardware that delivers the TiVo service at only one location and continue to explore the benefits of establishing a backup facility. Our business also will be harmed if consumers believe our service is unreliable. In addition to placing increased burdens on our engineering staff, service outages will create a flood of customer questions and complaints that must be responded to by our customer support personnel. Any frequent or persistent system failures could irreparably damage our reputation and brand and possibly trigger requests for refunds on subscription fees and hardware purchases and possible consumer litigation.

*We have detected in the past and may continue to detect errors and product defects in the future.* These problems can affect system uptime and result in significant warranty and repair problems, which could cause customer service and customer relations problems. Correcting errors in our software or fixing defects in our products requires significant time and resources, which could delay product releases and affect market acceptance of the TiVo service. Any delivery by us of products or upgrades with undetected material product defects or software errors could harm our credibility and market acceptance of the DVRs and the TiVo service. In addition, defective products could cause a risk of injury that may subject us to litigation or cause us to have to undertake a product recall. For example, we previously became aware of occasions where a part came loose from the remote control device that comes with the DVRs that enable the TiVo service, including occurrences where a young child gagged on or ingested a part of the remote control device. While we are unaware of any injuries resulting from the use of our products, we may be subject to products liability litigation in the future. Additionally, if we are required to repair or replace any of our products, we could incur significant costs, which would have a negative impact on our financial condition and results of operations.

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### **If we lose senior management or other key engineering personnel or are unable to replace or recruit key management and engineering personnel, we may not be able to successfully operate our business.**

Our future performance and growth will be substantially dependent on the continued services of our senior management and other key engineering personnel as well our ability to replace departed personnel and ability to recruit key management and engineering personnel in the future. The loss of any members of our senior management team or other key engineering personnel and our inability to hire additional senior management or other key engineering personnel could harm our business and results of operations. Competition to recruit and retain key management, engineering and other personnel in Silicon Valley is highly competitive. In addition, we do not have key man insurance policies for any of our key personnel which may adversely affect our ability to replace members of senior management.

### **Our Certificate of Incorporation, Bylaws, Rights Agreement and Delaware law could discourage a third party from acquiring us and consequently decrease the market value of our common stock.**

In the future, we could become the subject of an unsolicited attempted takeover of our Company. Although an unsolicited takeover could be in the best interests of our stockholders, certain provisions of Delaware law, our organizational documents and our Rights Agreement could be impediments to such a takeover.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, the statute prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws also require that any action required or permitted to be taken by our stockholders must be effected at a duly called annual or special meeting of the stockholders and may not be effected by a consent in writing. In addition, special meetings of our stockholders may be called only by a majority of the total number of authorized directors, the chairman of the board, our chief executive officer or the holders of 50% or more of our common stock. Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws also provide that directors may be removed only for cause by a vote of a majority of the stockholders and that vacancies on the Board of Directors created either by resignation, death, disqualification, removal or by an increase in the size of the Board of Directors may be filled by a majority of the directors in office, although less than a quorum. Our Amended and Restated Certificate of Incorporation also provides for a classified Board of Directors and specifies that the authorized number of directors may be changed only by resolution of the Board of Directors.

On January 9, 2001, our Board of Directors adopted a Rights Agreement. Our Rights Agreement was last amended on April 12, 2006. Each share of our common stock has attached to it a right to purchase one one-hundredth of a share of our Series B Junior Participating Preferred Stock at a price of \$60 per one one-hundredth of a preferred share. Subject to limited exceptions, the rights will become exercisable following the tenth day after a person or group announces the acquisition of 15% or more of our common stock, and thereby becomes an acquiring person, or announces commencement of a tender offer or exchange offer, the consummation of which would result in the ownership by the person or group of 15% or more of our common stock. In the event that a person becomes an acquiring person or if we are the surviving corporation in a merger with an acquiring person and the shares of our common stock were not changed or exchanged, the rights will thereafter become exercisable for a number of shares of our common stock equal to two times the then current purchase price of the right. On April 12, 2006, we amended the Rights Plan's definition of Acquiring Person to remove the limited carve out for America Online, Inc. and its affiliates and associates to acquire up to 30% of our common stock. The rights are not exercisable as of the date of this filing. We will be entitled to redeem the rights at \$0.01 per right at any time prior to the time that a person or group becomes an acquiring person.

These provisions of Delaware law, our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws and our Rights Agreement could make it more difficult for us to be acquired by another company, even if our acquisition is in the best interests of our stockholders. Any delay or prevention of a change of control or change in management could cause the market price of our common stock to decline.

### **In the future, our revenues and operating results may fluctuate significantly, which may adversely affect the market price of our common stock.**

We expect our revenues and operating results to fluctuate significantly due to a number of factors, many of which are outside of our control. Therefore, you should not rely on period-to-period comparisons of results of operations as an indication of our future performance. It is possible that in some periods our operating results may fall below the expectations of market analysts and investors. In such event, the market price of our common stock would likely fall.

Factors that may affect our annual operating results include:

demand for TiVo-enabled DVRs and the TiVo service;



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the timing and introduction of new services and features on the TiVo service;

seasonality and other consumer and advertising trends;

changes in revenue sharing arrangements with our strategic relationships;

entering into new or terminating existing strategic partnerships;

changes in our pricing policies, the pricing policies of our competitors and general pricing trends in the consumer electronics market;

timing of revenue recognition under our licensing agreements;

loss of subscriptions to the TiVo service;

recruiting and retention of key personnel; and

general economic conditions.

Because our expenses precede associated revenues, unanticipated shortfalls in revenues could adversely affect our results of operations for any given period and cause the market price of our common stock to fall.

**Seasonal trends may cause our quarterly operating results to fluctuate and our inability to forecast these trends may adversely affect the market price of our common stock.**

Consumer electronic product sales have traditionally been much higher during the holiday shopping season than during other times of the year. Although predicting consumer demand for our products is very difficult, we have experienced that sales of DVRs and new subscriptions to the TiVo service have been disproportionately high during the holiday shopping season when compared to other times of the year. If we are unable to accurately forecast and respond to consumer demand for our products, our reputation and brand will suffer and the market price of our common stock would likely fall.

We expect that a portion of our future revenues will come from targeted commercials and other forms of interactive television advertising enabled by the TiVo service. Expenditures by advertisers tend to be seasonal and cyclical, reflecting overall economic conditions as well as budgeting and buying patterns. A decline in the economic prospects of advertisers or the economy in general could alter current or prospective advertisers' spending priorities or increase the time it takes to close a sale with our advertisers, which could cause our revenues from advertisements to decline significantly in any given period.

**If we are unable to raise additional capital through the issuance of equity, debt or other financing activities on acceptable terms, our ability to effectively manage growth and build a strong brand could be harmed. We may incur debt to which covenants attach which could be violated if we do not meet our expectations.**

We expect that our existing capital resources will be sufficient to meet our cash requirements through the next twelve months. However, as we continue to grow our business, we may need to raise additional capital, which may not be available on acceptable terms or at all. We may also incur debt which will subject us to restrictive covenants which if violated by us would cause us to incur penalties and increased expenses which could in turn harm our business. If we cannot raise necessary additional capital on acceptable terms, we may not be able to develop or enhance our products and services, take advantage of future opportunities or respond to competitive pressures or unanticipated requirements.

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If additional capital is raised through the issuance of equity securities, the percentage ownership of our existing stockholders will decline, stockholders may experience dilution in net book value per share, or these equity securities may have rights, preferences or privileges senior to those of the holders of our common stock. In addition, we may be limited in our ability to raise capital through the issuance of additional equity securities by the number of authorized, but unissued and unreserved shares of our common stock available for issuance. Any debt financing, if available, may involve covenants limiting, or restricting our operations or future opportunities. For example, we may seek to leverage our existing and future revenues to raise capital for investing in future subscription growth initiatives. Such financing activities may involve the issuance of debt or other secured instruments tied to current or future revenues that may involve covenants limiting, or restricting our operations or future opportunities or may involve other risks to stockholders.

**The large number of shares available for future sale could adversely affect the market price for our stock.**

Sales of a substantial number of shares of our common stock in the public market or the perception that such sales might occur could adversely affect the market price of our common stock. Several of our stockholders own a substantial number of our shares.

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As of January 31, 2009, options to purchase a total of 22,792,242 shares were outstanding under our option and equity incentive plans, and there were 26,425,760 shares available for future grants. We have filed registration statements with respect to the shares of common stock issuable under our option and equity incentive plans.

Future sales of the shares of the common stock, or the registration for sale of such common stock, or the issuance of common stock to satisfy our current or future cash payment obligations or to acquire technology, property, or other businesses, could cause immediate dilution and adversely affect the market price of our common stock. The sale or issuance of such stock, as well as the existence of outstanding options and shares of common stock reserved for issuance under our option and equity incentive plans, also may adversely affect the terms upon which we are able to obtain additional capital through the sale of equity securities.

### **We expect to continue to experience volatility in our stock price.**

The market price of our common stock is highly volatile. Since our initial public offering in September 1999 through March 23, 2009, our common stock has closed between \$71.50 per share and \$2.55 per share, closing at \$7.26 on March 23, 2009. The market price of our common stock may be subject to significant fluctuations in response to, among other things, the factors discussed in this section and the following factors:

changes in estimates of our financial performance or changes in recommendations by securities analysts;

our failure to meet, or our ability to exceed, the expectations of securities analysts or investors;

release of new or enhanced products or introduction of new marketing initiatives by us or our competitors;

announcements by us or our competitors of the creation, developments under or termination of significant strategic relationships, joint ventures, significant contracts or acquisitions;

fluctuations in the market prices generally for technology and media-related stocks;

fluctuations in general economic conditions;

fluctuations in interest rates;

market conditions affecting the television and home entertainment industry and the technology sector;

fluctuations in operating results; and

additions or departures of key personnel.

The stock market has from time to time experienced extreme price and volume fluctuations, which have particularly affected the market prices for emerging companies, and which have often been unrelated to their operating performance. These broad market fluctuations may adversely affect the market price of our common stock.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

Our corporate headquarters, which houses our administrative, sales and marketing, customer service and product development activities, is located in Alviso, California, under a lease that expires on January 31, 2010, and is comprised of two buildings totaling 127,124 square feet of office space. We believe that our corporate facilities will be adequate to meet our office space needs for the next several years as we currently utilize approximately 84% of our total office space. Our current facilities lease obligations are subject to periodic increases and we believe that our existing facilities are well maintained and in good operating condition. The Company also has operating leases for sales and administrative office space in New York City, New York and Chicago, Illinois.

**ITEM 3. LEGAL PROCEEDING**

**Intellectual Property Litigation.** On January 5, 2004, TiVo filed a complaint against EchoStar Communications Corporation in the U.S. District Court for the Eastern District of Texas alleging willful and deliberate infringement of U.S. Patent No. 6,233,389, entitled Multimedia Time Warping System. On January 15, 2004, the Company amended its complaint to add EchoStar DBS Corporation, EchoStar Technologies Corporation, and Echosphere Limited Liability Corporation as additional defendants. The Company alleges that it is the owner of this patent, and further alleges that the defendants have willfully and deliberately infringed this patent by making, selling, offering to sell and/or selling digital video recording devices, digital video recording device software, and/or personal television services in the United States. On April 13, 2006, the jury rendered a verdict in favor of the Company in the amount of approximately \$74.0 million dollars.

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The jury ruled that the Company's patent is valid and that all nine of the asserted claims in the Company's patent are infringed by each of the accused EchoStar products. The jury also ruled that the defendants willfully infringed the patent. On September 8, 2006 the district court issued an Amended Final and Permanent injunction that prohibited EchoStar Communications Corporation from making, using, offering for sale or selling in the United States the following EchoStar DVRs: DP-501, DP-508, DP-510, DP-721, DP-921, DP-522, DP-625, DP-942, and all EchoStar Communications Corporation DVRs that are not more than colorably different from any of these products. On October 3, 2006, the United States Court of Appeals for Federal Circuit stayed the district court's injunction pending appeal. On January 31, 2008, the U.S. Court of Appeals for the Federal Circuit in Washington, D.C. unanimously ruled in favor of TiVo Inc. in connection with EchoStar's appeal of the district court judgment of patent infringement against EchoStar with respect to several claims (so called software claims) of the patent, upholding the full award of damages from the district court, and ordering that the stay of the district court's injunction against EchoStar's infringing digital video recorders that was issued pending appeal will dissolve when the appeal becomes final. The district court's judgment of infringement by EchoStar of certain other claims of the patent (so called hardware claims) were reversed and remanded for further proceedings. On October 6, 2008, the Supreme Court denied EchoStar's writ of certiorari. On October 8, 2008, the Company received \$104.6 million from EchoStar of which approximately \$87.8 million represents damages through September 8, 2006 and was recorded as litigation proceeds within the operating expense section of TiVo's statement of operations. The remaining approximately \$16.8 million was recorded as interest income and represented pre- and post-judgment interest through October 8, 2008. With respect to the district court's injunction and damages after September 8, 2006, the district court held a hearing on EchoStar's alleged work around of the Company's patent on February 17, 2009. The Company is incurring material expenses in this litigation.

On May 30, 2008, Dish Network Corporation and its related entities filed a complaint against TiVo in the U.S. District Court for the District of Delaware for declaratory relief that Dish's unspecified digital video recorders do not infringe TiVo's 389 patent. On July 7, 2008, TiVo filed a motion to dismiss Dish's complaint against TiVo for declaratory relief that Dish's unspecified DVRs do not infringe TiVo's 389 patent. On March 31, 2009, the court denied TiVo's motion to dismiss and ordered briefing on whether the complaint should be transferred to the Eastern District of Texas. The Company intends to defend this action vigorously; however, the Company may incur material expenses in connection with this lawsuit and in the event there is an adverse outcome, the Company's business could be harmed. The Company may incur expenses in connection with this litigation that may become material in the future. No loss is considered probable or estimable at this time.

On April 29, 2005, EchoStar Technologies Corporation filed a complaint against TiVo and Humax USA, Inc. in the U.S. District Court for the Eastern District of Texas alleging infringement of U.S. Patent Nos. 5,774,186 (Interruption Tolerant Video Program Viewing), 6,529,685 B2 (Multimedia Direct Access Storage Device and Formatting Method), 6,208,804 B1 (Multimedia Direct Access Storage Device and Formatting Method) and 6,173,112 B1 (Method and System for Recording In-Progress Broadcast Programs). The complaint alleges that EchoStar Technologies Corporation is the owner by assignment of the patents allegedly infringed. The complaint further alleges that the TiVo and Humax have infringed, contributorily infringed and/or actively induced infringement of the patents by making, using, selling or importing digital video recording devices, digital video recording device software and/or personal television services in the United States that allegedly infringe the patents, and that such infringement is willful and ongoing. Under the terms of the Company's agreement with Humax governing the distribution of certain DVRs that enable the TiVo service, the Company is required to indemnify Humax against any claims, damages, liabilities, costs, and expenses relating to claims that the Company's technology infringes upon intellectual property rights owned by third parties. On May 10, 2005, Humax formally notified TiVo of the claims against it in this lawsuit as required by Humax's agreement with TiVo. On July 1, 2005, the defendants filed their answer and counterclaims. On May 10, 2006, the district court dismissed with prejudice, EchoStar's claim of infringement against TiVo and Humax relating to patent 112 (Method and System for Recording In-Progress Broadcast Programs) and claims 21-30 and 32 relating to patent 186 (Interruption Tolerant Video Program Viewing). A claim construction hearing was held on May 11, 2006. On July 14, 2006, the magistrate judge for the U.S. District Court for the Eastern District of Texas, issued a stay of the case pending the USPTO completion of proceedings with respect to TiVo's request for reexamination of the 186, 685, and 804 patents. The USPTO has preliminarily rejected each of the claims of the 186, 685, and 804 patents, but we cannot assure you that all of the patent claims ultimately will be rejected or that they will not be amended and emerge from the USPTO reexamination proceedings. The Company intends to defend this action vigorously; however, the Company is incurring expenses in connection with this lawsuit, which could become material in the future and in the event there is an adverse outcome, the Company's business could be harmed. No loss is considered probable or estimable at this time.

On December 22, 2008, Guardian Media Technologies, LTD filed a complaint against more than 30 companies including TiVo in the U.S. District Court for the Central District of California alleging infringement of U.S. Patent No. 4,930,158 ( Selective Video Playing System ) and 4,930,160 ( Automatic Censorship of Video Programs ). The complaint alleges that Guardian Media Technologies is the owner by assignment of the patents allegedly infringed. The complaint further alleges that prior to the expiration of the patents in 2007, TiVo had infringed, contributorily infringed and/or actively induced infringement of the 160 patent by making, having made, using, importing, providing, supplying, distributing, selling and/or offering for sale products and/or systems that infringed or, when used, infringed one or more claims of the patent. The Company intends to defend itself vigorously in this matter. The Company may incur expenses in connection with this litigation that may become material in the future. No loss is considered probable or estimable at this time.

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**Securities Litigation.** The Company and certain of its officers and directors (TiVo defendants) were originally named as defendants in a consolidated securities class action lawsuit filed in the United States District Court for the Southern District of New York. This action, which is captioned Werberger v. TiVo et al., also names several of the underwriters involved in the Company's initial public offering (IPO) as defendants. This class action is brought on behalf of a purported class of purchasers of the Company's common stock from the time of the Company's IPO (October 31, 1999)

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through December 6, 2000. The central allegation in this action is that the underwriters in the Company's IPO solicited and received undisclosed commissions from, and entered into undisclosed arrangements with, certain investors who purchased the Company's stock in the IPO and the after-market, and that the TiVo defendants violated the federal securities laws by failing to disclose in the IPO prospectus that the underwriters had engaged in these allegedly undisclosed arrangements. More than 300 issuers have been named in similar lawsuits. In February 2003, after the issuer defendants (including the TiVo defendants) filed an omnibus motion to dismiss, the Court dismissed the Section 10(b) claim as to the Company, but denied the motion to dismiss the Section 11 claim as to the Company and virtually all of the other issuer-defendants. On October 8, 2002, the Company's executive officers who were named as defendants in this action were dismissed without prejudice.

On June 26, 2003, the plaintiffs in the suit announced a proposed settlement with the Company and the other issuer defendants. This proposed settlement was terminated on June 25, 2007, following the ruling by the United States Court of Appeals for the Second Circuit on December 5, 2006, reversing the District Court's granting of class certification in the six focus cases currently being litigated in this proceeding. The proposed settlement had provided that the insurers of all settling issuers would guarantee that the plaintiffs recover \$1 billion from non-settling defendants, including the investment banks who acted as underwriters in those offerings. Under the proposed settlement, in the event that the plaintiffs did not recover at least \$1 billion from the non-settling defendants, the insurers for the settling issuers would make up the difference; the maximum amount that could be charged to the Company's insurance policy under the proposed settlement in the event that the plaintiffs recovered nothing from the investment banks would have been approximately \$3.9 million.

On August 14, 2007, the plaintiffs filed Amended Master Allegations. On September 27, 2007, the Plaintiffs filed a Motion for Class Certification. Defendants filed a Motion to Dismiss the focus cases on November 9, 2007. On March 26, 2008, the Court ruled on the Motion to Dismiss, holding that the plaintiffs had adequately pleaded their Section 10(b) claims against the Issuer Defendants and the Underwriter Defendants in the focus cases. As to the Section 11 claim, the Court dismissed the claims brought by those plaintiffs who sold their securities for a price in excess of the initial offering price, on the grounds that they could not show cognizable damages, and by those who purchased outside the previously certified class period, on the grounds that those claims were time barred. This ruling, while not binding on the Company's case, provides guidance to all of the parties involved in this litigation. On October 2, 2008 plaintiffs requested that the class certification motion in the focus cases be withdrawn without prejudice. On Friday October 10, 2008, this Court signed an order granting that request. The Company may incur expenses in connection with this litigation that may become material in the future. No loss is considered probable or estimable at this time.

On October 3, 2007, Vanessa Simmonds filed a complaint against the Company's former lead underwriters Credit Suisse Group and Bank of America (Lead Underwriters), with the Company named as a nominal defendant, in the U.S. District Court for the Western District of Washington alleging violations of Section 16(b) in connection with the Company's initial public offering and associated transactions in the Company's stock in the six month period following the Company's initial public offering by the Company's Lead Underwriters. On or about December 3, 2007, Ms. Simmonds delivered a copy of the complaint to the Company. The complaint itself is directed solely at the initial public offering underwriters, not at the Company itself, and does not seek any damages or recovery from the Company itself. On February 25, 2008, the plaintiff filed an amended complaint which is substantially similar to the initial complaint, but which also names Credit Suisse Securities (USA), Bank of America Corporation, and Robertson Stevenson, Inc. as defendants in the amended complaint that continues to name the Company only as a nominal defendant. On July 25, 2008, thirty of the issuers, including the Company (collectively, the Moving Issuers), in the coordinated proceeding filed a Joint Motion to Dismiss. Also on July 25, 2008, all of the underwriter defendants in the coordinated proceeding filed an Omnibus Motion to Dismiss. The hearing on the motions to dismiss was held on January 16, 2009. On March 12, 2009, the Court granted both the Issuers' Joint Motion to Dismiss and the Underwriters' Omnibus Motion to Dismiss. The Court held that the plaintiff's demand letters to the Moving Issuers were legally insufficient and therefore the plaintiff lacked standing to maintain the thirty Section 16(b) suits relating to the Moving Issuers. Accordingly, the Court granted without prejudice the Moving Issuers' Joint Motion to Dismiss, and further held that it would not permit the plaintiff to amend her demand letters. In regard to the Underwriters' Omnibus Motion to Dismiss, the Court held that the remaining twenty-four Section 16(b) suits were barred by the statute of limitations, and accordingly granted with prejudice the Omnibus Motion to Dismiss as to those suits. On March 31, 2009, plaintiff filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit of the District Court's dismissal of these fifty-four actions. The Company may incur expenses in connection with this litigation that may become material in the future. No loss is considered probable or estimable at this time.

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**Other.** In April 2008, the Attorney General of Missouri served TiVo Inc. with an investigative demand subpoena seeking information as to whether the Company has engaged in any unlawful merchandising practices in connection with its rebate program in the State of Missouri. The Company has been cooperating with the investigation. Should there be an adverse outcome, the Company's business could be harmed. No loss is considered probable or estimable at this time.

The Company is involved in numerous lawsuits and receives numerous threats of litigation in the ordinary course of its business. The Company assesses potential liabilities in connection with these lawsuits and threatened lawsuits under SFAS No. 5. The Company accrues an estimated loss for these loss contingencies if both of the following conditions are met: information available prior to issuance of the financial statements indicates that it is probable that a liability has been incurred at the date of the financial statements and the amount of loss can be reasonably estimated. As of January 31, 2009, the Company has not accrued any liability for any lawsuits filed against the Company as the conditions for accrual have not been met. The Company expenses legal costs as they are incurred.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

No matters were submitted to a vote of security holders during the quarter ended January 31, 2009.

**PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Market Information for Common Equity**

Our common stock has traded on the Nasdaq Global Market under the symbol TIVO since September 30, 1999. Prior to that time, there was no public trading market for our common stock.

The following table sets forth, for the periods indicated, the high and low sales prices of our common stock as reported by the Nasdaq Global Market, on any trading day during the respective period:

<b>Fiscal Year 2009</b>	<b>High</b>	<b>Low</b>
Fourth Quarter ended January 31, 2009	\$ 7.63	\$ 4.00
Third Quarter ended October 31, 2008	\$ 9.07	\$ 4.95
Second Quarter ended July 31, 2008	\$ 9.00	\$ 5.86
First Quarter ended April 30, 2008	\$ 9.43	\$ 7.38
<b>Fiscal Year 2008</b>	<b>High</b>	<b>Low</b>
Fourth Quarter ended January 31, 2008	\$ 9.11	\$ 5.58
Third Quarter ended October 31, 2007	\$ 7.90	\$ 5.28
Second Quarter ended July 31, 2007	\$ 6.58	\$ 5.31
First Quarter ended April 30, 2007	\$ 6.74	\$ 5.31

**Holders of Record**

As of March 23, 2008, we had 1,212 stockholders of record and the closing price of our common stock was \$7.26 per share.

**Dividend Policy**

We paid no cash dividends during the fiscal year ended January 31, 2009 and we expect to continue our current policy of paying no cash dividends to holders of our common stock for the foreseeable future.

**Equity Compensation Plan Information**



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Information required by this item with respect to equity compensation plans of the Company is incorporated by reference to the Company's Proxy Statement for its 2009 Annual Meeting of shareholders. The definitive Proxy Statement will be filed within 120 days of the end of the fiscal year ended January 31, 2009.

**Table of Contents****Recent Sales of Unregistered Securities**

On August 23, 2001, five-year warrants were issued to convertible noteholders and bankers to purchase 2,192,404 shares of TiVo's common stock at an exercise price of \$7.85. On August 28, 2006, several of these holders exercised their warrants resulting in the issuance of 424,150 shares of TiVo's common stock, pursuant to the terms of the agreement, and net proceeds of approximately \$3.3 million. The balance of the warrants that would have resulted in the issuance of 1,768,254 shares of TiVo Inc. common stock expired unexercised.

Four-year warrants were issued to certain institutional investors on October 8, 2002 to purchase 1,323,120 shares of the Company's common stock at an exercise price of \$5.00 with an expiration date of October 8, 2006. In September 2006, we had a cashless exercise of these warrants resulting in the issuance of 484,231 shares of our common stock.

**Purchases of Equity Securities**

We have reacquired shares of stock from employees, upon the vesting of restricted stock that was granted under our 1999 Employee Incentive Plan. These shares were forfeited by the employees, and reacquired by us to satisfy the employees' minimum statutory tax withholding which is required on restricted stock once they become vested and are shown in the following table:

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid per share	(c) Total Number of Share Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares that May Yet be Purchased Under the Plans or Programs
March 1 through March 31, 2008	38,415	\$ 8.67		\$
April 1 through April 30, 2008	13,525	\$ 8.86		\$
June 1 through June 30, 2008	7,150	\$ 6.34		\$
July 1 through July 31, 2008	30,450	\$ 6.09		\$
September 1 through September 30, 2008	16,473	\$ 7.83		\$
				\$

The Company will continue to reacquire shares of stock from employees as their restricted stock grants vest.

**Table of Contents****Stock Performance Graph**

The following table and graph compares the cumulative total stockholder returns for our common stock, the NASDAQ Composite index and the Research Data Group ( RDG ) Technology Composite index over the last five fiscal years. The graph and table assume an investment of \$100 in TiVo and in each index on January 31, 2004, and that dividends, if any were reinvested. The graph and table depict the change in value of TiVo in relation to the indices as of January 31<sup>st</sup> of each subsequent year (and not for any interim or other period). The stock performance shown on the graph and table below is not necessarily indicative of future price performance.

	2004	2005	January 31,		2008	2009
			2006	2007		
<b>TiVo Inc.</b>	<b>100.00</b>	<b>37.30</b>	<b>51.26</b>	<b>49.77</b>	<b>81.58</b>	<b>66.88</b>
<b>NASDAQ Composite</b>	<b>100.00</b>	<b>101.08</b>	<b>114.61</b>	<b>124.99</b>	<b>120.39</b>	<b>73.10</b>
<b>RDG Technology Composite</b>	<b>100.00</b>	<b>93.62</b>	<b>107.08</b>	<b>113.79</b>	<b>111.20</b>	<b>69.73</b>

**Table of Contents****ITEM 6. SELECTED FINANCIAL DATA**

The following selected financial data as of and for the fiscal years ended January 31, 2009, 2008, 2007, 2006, and 2005, respectively, have been derived from our consolidated financial statements audited by KPMG LLP, independent registered public accounting firm. These historical results are not necessarily indicative of the results of operations to be expected for any future period.

The data set forth below (in thousands, except per share data) should be read in conjunction with Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations and the consolidated financial statements included in Item 8. Financial Statements and Supplementary Data.

	2009	Fiscal Year Ended January 31,			2005
		2008	2007	2006	
		(in thousands, except share and per share)			
<b>Consolidated Statement of Operations Data:</b>					
<b>Revenues</b>					
Service revenues	\$ 188,408	\$ 211,496	\$ 198,924	\$ 167,194	\$ 107,166
Technology revenues	20,126	19,382	18,409	2,797	6,491
Hardware revenues	41,133	41,798	41,588	28,138	59,354
<b>Net revenues</b>	<b>249,667</b>	<b>272,676</b>	<b>258,921</b>	<b>198,129</b>	<b>173,011</b>
<b>Cost and Expenses</b>					
Cost of service revenues	44,603	42,976	43,328	34,179	29,360
Cost of technology revenues	12,300	17,367	16,849	782	6,575
Cost of hardware revenues	57,742	92,052	112,505	87,005	120,424
Research and development	62,083	58,780	50,728	41,087	37,634
Sales and marketing	24,944	23,987	22,520	18,610	16,998
Sales and marketing, subscription acquisition costs	6,038	31,050	20,767	18,641	21,325
General and administrative	42,931	42,954	45,824	38,529	16,788
Litigation proceeds	(87,811)				
<b>Income(loss) from operations</b>	<b>86,837</b>	<b>(36,490)</b>	<b>(53,600)</b>	<b>(40,704)</b>	<b>(76,093)</b>
Interest income	18,636	5,031	4,767	3,084	1,548
Interest expense and other	(553)	(102)	(173)	(14)	(5,459)
<b>Income(loss) before income taxes</b>	<b>104,920</b>	<b>(31,561)</b>	<b>(49,006)</b>	<b>(37,634)</b>	<b>(80,004)</b>
Provision for income taxes	(1,328)	(30)	(52)	(64)	(134)
<b>Net income(loss)</b>	<b>\$ 103,592</b>	<b>\$ (31,591)</b>	<b>\$ (49,058)</b>	<b>\$ (37,698)</b>	<b>\$ (80,138)</b>
<b>Net income(loss) per share</b>					
Basic	\$ 1.03	\$ (0.32)	\$ (0.55)	\$ (0.45)	\$ (1.00)
Diluted	\$ 1.01	\$ (0.32)	\$ (0.55)	\$ (0.45)	\$ (1.00)
Weighted average shares used to calculate basic net income(loss) per share	100,389,980	97,510,576	89,864,237	83,682,575	80,263,980
Weighted average shares used to calculate diluted net income(loss) per share	102,595,607	97,510,576	89,864,237	83,682,575	80,263,980
	2009	2008	As of January 31, 2007	2006	2005
			(in thousands)		
<b>Consolidated Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 162,337	\$ 78,812	\$ 89,079	\$ 85,298	\$ 87,245
Short-term investments	44,991	20,294	39,686	18,915	19,100

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Total assets	265,628	167,049	211,950	159,008	160,052
Long-term portion of deferred revenues	28,557	38,128	54,851	67,575	63,131
Total stockholders' equity (deficit)	154,487	16,120	14,644	(30,420)	(3,042)

**Table of Contents****Quarterly Results of Operations**

The following table presents certain unaudited statements of operations data for our eight most recent quarters ended January 31, 2009. In management's opinion, this unaudited information has been prepared on the same basis as the audited annual financial statements and includes all adjustments, consisting only of normal recurring adjustments, necessary for a fair representation of the unaudited information for the quarters presented. This information should be read in conjunction with our audited consolidated financial statements and the notes thereto, included elsewhere in this annual report. The results of operations for any quarter are not necessarily indicative of results that may be expected for any future period.

	Three Months Ended							
	Jan 31, 2009 <sup>(1)</sup>	Oct 31, 2008 <sup>(2)</sup>	Jul 31, 2008 <sup>(3)</sup>	Apr 30, 2008 <sup>(4)</sup>	Jan 31, 2008 <sup>(5)</sup>	Oct 31, 2007 <sup>(6)</sup>	Jul 31, 2007 <sup>(7)</sup>	Apr 30, 2007
(unaudited, in thousands except per share and share amounts)								
<b>Revenues</b>								
Service revenues	\$ 44,115	\$ 47,676	\$ 48,174	\$ 48,443	\$ 51,025	\$ 52,940	\$ 53,376	\$ 54,155
Technology revenues	4,353	3,997	5,369	6,407	7,027	5,339	3,084	3,932
Hardware revenues	10,712	12,777	11,699	5,945	16,066	17,240	6,199	2,293
<b>Net revenues</b>	59,180	64,450	65,242	60,795	74,118	75,519	62,659	60,380
<b>Cost of revenues</b>								
Cost of service revenues	11,180	10,984	11,245	11,194	12,019	10,738	10,064	10,155
Cost of technology revenues	2,740	2,516	3,124	3,920	5,252	4,912	3,696	3,507
Cost of hardware revenues	15,764	16,339	15,274	10,365	23,929	29,144	28,239	10,740
<b>Total cost of revenues</b>	29,684	29,839	29,643	25,479	41,200	44,794	41,999	24,402
<b>Gross margin</b>	29,496	34,611	35,599	35,316	32,918	30,725	20,660	35,978
<b>Operating expenses</b>	15,459							
Research and development	6,517	16,553	15,323	14,748	15,416	14,049	15,070	14,245
Sales and marketing	1,690	6,585	5,906	5,936	7,336	5,967	5,381	5,303
Sales and marketing, subscription acquisition costs	11,382	2,301	888	1,159	7,195	9,050	9,015	5,790
General and administrative	35,048	10,344	10,869	10,336	10,234	11,106	10,392	11,222
Litigation proceeds		(87,811)						
<b>Income (loss) from operations</b>	(5,552)	86,639	2,613	3,137	(7,263)	(9,447)	(19,198)	(582)
Interest income	423	17,213	421	579	1,066	1,218	1,331	1,416
Interest expense and other	(278)	(94)	(94)	(87)	(183)	(45)	209	(83)
<b>Income(loss) before income taxes</b>	(5,407)	103,758	2,940	3,629	(6,380)	(8,274)	(17,658)	751
Provision for income taxes	1,840	(3,132)	(23)	(13)	(22)			(8)
<b>Net income(loss)</b>	\$ (3,567)	\$ 100,626	\$ 2,917	\$ 3,616	\$ (6,402)	\$ (8,274)	\$ (17,658)	\$ 743
Net income(loss) per common share-basic	\$ (0.04)	\$ 1.00	\$ 0.03	\$ 0.04	\$ (0.06)	\$ (0.08)	\$ (0.18)	\$ 0.01
Net income(loss) per common share-diluted	\$ (0.04)	\$ 0.98	\$ 0.03	\$ 0.04	\$ (0.06)	\$ (0.08)	\$ (0.18)	\$ 0.01

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Weighted average common shares used to calculate basic net income(loss) per share	101,303,123	100,804,813	100,025,002	99,386,826	98,517,991	97,611,001	97,084,184	96,829,128
Weighted average common shares used to calculate diluted net income(loss) per share	101,303,123	102,569,559	102,217,222	102,709,583	98,517,991	97,611,001	97,084,184	98,046,685

- (1) The fourth quarter of fiscal year ended January 31, 2009 results of operations includes a benefit of \$518,000 in cost of hardware revenues resulting from the sale of previously impaired inventory and a reduction of service revenues of \$1.7 million related to the prospective change as of November 1, 2008 in estimated life of the product lifetime subscriptions from 54 months to 60 months.
- (2) The third quarter of fiscal year ended January 31, 2009 results of operations includes a benefit of \$1.4 million in cost of hardware revenues resulting from the sale of previously impaired inventory.
- (3) The second quarter of fiscal year ended January 31, 2009 results of operations includes a benefit of \$1.4 million in cost of hardware revenues resulting from the sale of previously impaired inventory.
- (4) The first quarter of fiscal year ended January 31, 2009 results of operations includes a benefit of \$1.6 million in cost of hardware revenues resulting from the sale of previously impaired inventory.
- (5) The fourth quarter of fiscal year ended January 31, 2008 results of operations includes a benefit of \$4.1 million in cost of hardware revenues resulting from the sale of previously impaired inventory and a reduction of service revenues of \$2.5 million related to the prospective change as of November 1, 2007 in estimated life of the product lifetime subscriptions from 48 months to 54 months. Additionally, we recognized \$1.1 million of DIRECTV revenues deferred from the prior fiscal year as our obligation to provide services to DIRECTV in connection with those revenues expired on January 31, 2008.
- (6) The third quarter of fiscal year ended January 31, 2008 results of operations include a benefit of \$696,000 in cost of hardware revenues resulting from the sale of previously impaired inventory.

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- (7) The results of operations for the quarter ended July 31, 2007 included an \$11.2 million charge to cost of hardware sales which were recorded as a result of slower than expected sales of standard definition DVRs and the resulting changes in our sales forecast.

### **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*You should read the following discussion and analysis in conjunction with the consolidated financial statements and the notes included elsewhere in this annual report and the section "Risk Factors" in Item 1A, as well as other cautionary statements and risks described elsewhere in this report, before deciding to purchase, sell or hold our common stock.*

#### **Executive Overview and Outlook of Financial Results**

In the fiscal year ended January 31, 2009 TiVo recorded net income of \$103.6 million, which included a receipt of \$103.3 million, net of tax, in litigation proceeds and interest from EchoStar. The net income for the fiscal year ended January 31, 2009 reflects \$104.6 million in litigation proceeds received from EchoStar. This amount was recorded as \$(87.8) million in litigation proceeds within the operating expenses section of the consolidated statement of operations and \$16.8 million in interest income. Additionally, we recorded \$1.3 million in tax expense related to the receipt of these monies. There is no similar transaction recorded in the consolidated statement of operations for the fiscal year ended January 31, 2008. As of January 31, 2009, the Company had over \$200 million in cash, cash equivalents, and short-term investments and no debt.

During the fiscal year ended January 31, 2009, our service revenues decreased by 11% or \$23.1 million over the prior fiscal year due to a decrease of 91,000 TiVo-Owned subscriptions combined with an increase in the number of months over which we recognize product lifetime subscription revenues. Additionally, we continue to experience a decline in our MSOs/Broadcaster installed subscription base resulting in a decrease to our total cumulative subscription base. The loss of MSOs/Broadcaster subscriptions is a result of DIRECTV not currently deploying new TiVo boxes and our mass distribution deals with Comcast, Cox, and DIRECTV being still in development and/or the early phases of deployment.

Due to current economic conditions, on November 18, 2008, we reduced our operational expenses, primarily through a reduction in headcount of approximately 7% or 37 employees. We incurred pre-tax charges of approximately \$1.0 million, for employee-related severance benefits and out-placement costs in the quarter and fiscal year ended January 31, 2009. We expect annual savings of approximately \$5.1 million as a result of this reduction in headcount.

In this fiscal year ending January 31, 2010, we expect to continue our efforts to add new subscriptions through our mass distribution partnerships such as Comcast and through our TiVo-Owned direct and retail sales. However, we expect continued losses in our installed base of MSOs/Broadcasters subscriptions as DIRECTV will not deploy new TiVo boxes prior to the launch of the new HD platform described in the Significant Relationships section of Item 1. Business, and our mass distribution deals with Comcast, Cox, and Seven (Australia and in the future New Zealand) are still in development and/or the early phases of deployment.

Service revenues may well be lower in the fiscal year ending January 31, 2010 than in fiscal year 2009 as revenues from new TiVo-Owned subscriptions are expected to be more than offset by the continued decline of product lifetime subscription related revenues as such revenues become fully recognized. Additionally, mass distribution partnerships including Comcast, Cox, Seven (Australia and in the future New Zealand), and others are in the early phases of development or deployment and will be more than offset by our continued subscription losses from our DIRECTV subscriptions, as the HD DIRECTV DVR with TiVo service will not be available until calendar year 2010.

#### **Key Business Metrics**

Management periodically reviews certain key business metrics in order to evaluate our operations, allocate resources, and drive financial performance in our business. Management monitors these metrics together and not individually as it does not make business decisions based upon any single metric.

**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. Below is a table that details the change in our subscription base during the last three fiscal years. 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, and Comcast and 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.





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(Subscriptions in thousands)	Fiscal Year Ended January 31,		
	2009	2008	2007
<b>TiVo-Owned Subscription Gross Additions:</b>	187	276	429
<b>Subscription Net Additions/(Losses):</b>			
TiVo-Owned	(91)	19	235
MSOs/Broadcasters	(520)	(518)	(155)
<b>Total Subscription Net Additions/(Losses)</b>	<b>(611)</b>	<b>(499)</b>	<b>80</b>
<b>Cumulative Subscriptions:</b>			
TiVo-Owned	1,654	1,745	1,726
MSOs/Broadcasters	1,681	2,201	2,718
<b>Total Cumulative Subscriptions</b>	<b>3,335</b>	<b>3,946</b>	<b>4,444</b>
<b>Fully Amortized Active Lifetime Subscriptions</b>	<b>225</b>	<b>175</b>	<b>165</b>
<b>% of TiVo-Owned Cumulative</b>	<b>59%</b>	<b>61%</b>	<b>58%</b>

**Subscriptions paying recurring fees**

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-Owned subscription net losses were 91,000 subscriptions decreasing the TiVo-Owned installed subscription base to approximately 1.7 million subscriptions for the fiscal year ended January 31, 2009 as compared to the fiscal year ended January 31, 2008. We believe the decrease in total TiVo-Owned subscriptions was largely due to the continued decrease in subscription gross additions because of increased competition from DVRs distributed by cable and satellite providers. As a result of this competition and current economic conditions and our efforts to manage our subscriber acquisition costs, we are cautious about our sales in the near term and may well experience further net losses in our TiVo-Owned subscription base. MSOs/Broadcasters installed subscription base decreased by 520,000 subscriptions to 1.7 million subscriptions as of January 31, 2009 as compared to the same prior year period. This decrease is due to DIRECTV's promotion of a competing DVR service and our other mass distribution deals being still in the early phases of development and/or deployment. We have agreed to work with DIRECTV to develop a version of the TiVo service for DIRECTV's broadband-enabled HD DVR platform which we expect to launch to consumers in calendar year 2010.

TiVo-Owned subscription net additions were 19,000 subscriptions slightly increasing the TiVo-Owned installed subscription base to 1.7 million subscriptions for the fiscal year ended January 31, 2008 as compared to the fiscal year ended January 31, 2007. TiVo-Owned subscription net additions decreased by 216,000, from 235,000 TiVo-Owned subscriptions net additions in the prior fiscal year period to 19,000 TiVo-Owned subscription net additions in the fiscal year ended January 31, 2009. We believe this decrease was largely due to lower gross additions because of increased competition from DVRs distributed by cable and satellite providers, including DIRECTV's non-TiVo products, as well as from a weaker economic environment and from an increase in churn resulting from a larger subscription base.

As of January 31, 2009, approximately 225,000 product lifetime subscriptions had exceeded the period we use to recognize product lifetime subscription revenues, but had made contact to the TiVo service within the prior six months. Such TiVo product lifetime subscriptions represent approximately 34% of our cumulative lifetime subscriptions as

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compared to 26% for the fiscal year ended January 31, 2008. We continue to incur minimal costs of service for these subscriptions without recognizing corresponding subscription revenues. Effective November 1, 2008, we extended the period we used to recognize product lifetime subscription revenues from 54 months to 60 months for the product lifetime subscriptions acquired on or before October 31, 2007 and such change is being recognized on a prospective basis. We now amortize all product lifetime subscriptions over a 60 month period. Refer to Critical Accounting Estimates Recognition Period for Product Lifetime Subscriptions Revenues. There were no additions to the fully amortized active lifetime subscriptions during the quarter ended January 31, 2009 since under the revised amortization period, product lifetime subscriptions that would have become fully amortized using the previous amortization period are not yet fully amortized subscriptions at January 31, 2009. We expect the number of fully amortized lifetime subscriptions to increase during the fiscal year ending January 31, 2010, however we cannot predict whether the cumulative number of fully amortized active lifetime subscriptions will increase or decrease as this will depend on churn of already fully amortized lifetime subscriptions and churn of subscriptions that will become fully amortized during the fiscal year ending January 31, 2010.

***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 for our low cost product offerings, current economic conditions, 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.

The following table presents our TiVo-Owned Churn Rate per month information:

	<b>Fiscal Year Ended January 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
	<b>in thousands, except percentages</b>		
TiVo-Owned subscription cancellations	(278)	(257)	(194)
Average TiVo-Owned subscriptions	1,695	1,721	1,584
Annual Churn Rate	-16%	-15%	-12%
Number of Months	12	12	12
TiVo-Owned Churn Rate per month	-1.4%	-1.2%	-1.0%

Included in our TiVo-Owned Churn Rate per month are those product lifetime subscriptions that have both reached the end of the revenue recognition period and whose DVRs have not contacted the TiVo service within the prior six months. Conversely, we do not count as churn product lifetime subscriptions that have not reached the end of the revenue recognition period, regardless of whether such subscriptions continue to contact the TiVo service. TiVo-Owned Churn Rate per month increased to 1.4% for the fiscal year ended January 31, 2009 and will likely increase further in future periods as a result of increasing churn from product lifetime subscriptions, competition from other providers, a weakening economy, and the growing importance of encrypted digital and high definition television recording capabilities which can only be accessed through either cable or satellite provided set top box or through a box which incorporates CableCARD™ technology.

***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 acquisition costs for a given period divided by TiVo-Owned subscription gross additions for the same period. In the first fiscal quarter of 2008, we revised our definition of total acquisition costs. We now define total acquisition costs as sales and marketing, subscription acquisition costs less net TiVo-Owned related hardware revenues (defined as gross hardware revenues less rebates, revenue share and market development funds paid to retailers) plus TiVo-Owned 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 incur limited or no acquisition costs for these new subscriptions. 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.



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	<b>Fiscal Year Ended January 31,</b>		
	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b><u>Subscription Acquisition Costs</u></b>			
Sales and marketing, subscription acquisition costs	\$ 6,038	\$ 31,050	\$ 20,767
Hardware revenues	(41,133)	(41,798)	(41,588)
Less: MSOs/Broadcasters-related hardware revenues	9,333		
Cost of hardware revenues	57,742	92,052	112,505
Less: MSOs/Broadcasters-related cost of hardware revenues	(8,590)		
<b>Total Acquisition Costs</b>	<b>23,390</b>	<b>81,304</b>	<b>91,684</b>
<b>TiVo-Owned Subscription Gross Additions</b>	<b>187</b>	<b>276</b>	