Limelight Networks, Inc.
Form 10-Q
May 07, 2010
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

þ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended March 31, 2010

OR

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission file number 001-33508

LIMELIGHT NETWORKS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**20-1677033**
(State or other jurisdiction of incorporation or organization)	***(I.R.S. Employer Identification No.)***

2220 W. 14th Street

Tempe, AZ 85281

(Address of principal executive offices, including Zip Code)

(602) 850-5000

(Registrant s telephone number, including area code)

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 þ No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ¨ No ¨

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 the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ¨	Accelerated filer þ	Non-accelerated filer ¨ (Do not check if a smaller reporting company)	Smaller reporting company ¨

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

The number of shares outstanding of the registrant s common stock as of May 5, 2010: 88,254,488 shares.

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LIMELIGHT NETWORKS, INC.

FORM 10-Q

Quarterly Period Ended March 31, 2010

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

LIMELIGHT NETWORKS, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except per share data)

	March 31, 2010 (Unaudited)	December 31, 2009
ASSETS		
Current assets:		
Cash and cash equivalents	$ 95,295	$ 89,509
Marketable securities	53,557	64,870
Accounts receivable, net of reserves of $9,667 at March 31, 2010 and $9,226 at December 31, 2009, respectively	25,828	26,363
Income taxes receivable	623	617
Prepaid expenses and other current assets	8,919	9,654
Total current assets	184,222	191,013
Property and equipment, net	35,776	35,524
Marketable securities, less current portion	8	12
Goodwill	1,895	619
Other intangible assets, net	4,291	370
Other assets	8,299	8,132
Total assets	$ 234,491	$ 235,670
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 6,860	$ 5,144
Deferred revenue, current portion	10,650	12,199
Other current liabilities	15,495	14,140
Total current liabilities	33,005	31,483
Deferred revenue, less current portion		1,377
Deferred income tax, less current portion	14	10
Total liabilities	33,019	32,870
Commitments and contingencies		
Stockholders equity:		
Convertible preferred stock, $0.001 par value; 7,500 shares authorized; 0 shares issued and outstanding		
Common stock, $0.001 par value; 150,000 shares authorized at March 31, 2010; 85,228 and 85,011 shares issued and outstanding at March 31, 2010 and December 31, 2009, respectively	85	85
Additional paid-in capital	313,217	308,537
Accumulated other comprehensive (loss) income	(131)	93
Accumulated deficit	(111,699)	(105,915)
Total stockholders equity	201,472	202,800

Total liabilities and stockholders equity	$ 234,491	$ 235,670

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

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LIMELIGHT NETWORKS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share data)

(Unaudited)

	For the Three Months Ended March 31,	
	2010	**2009**
Revenues	$ 36,087	$ 33,175
Cost of revenue:		
Cost of services	16,205	14,923
Depreciation network	4,778	6,548
Total cost of revenue	20,983	21,471
Gross margin	15,104	11,704
Operating expenses:		
General and administrative	8,127	11,904
Sales and marketing	9,387	8,139
Research and development	2,645	1,910
Depreciation and amortization	766	540
Provision for litigation		(65,645)
Total operating expenses	20,925	(43,152)
Operating (loss) income	(5,821)	54,856
Other income (expense):		
Interest expense	(1)	(11)
Interest income	302	383
Other (expense) income	(25)	227
Total other income (expense)	276	599
(Loss) income before income taxes	(5,545)	55,455
Income tax expense	240	320
Net (loss) income	$ (5,785)	$ 55,135
Net (loss) income per weighted average share:		
Basic	$ (0.07)	$ 0.66
Diluted	$ (0.07)	$ 0.64
Shares used in per weighted average share calculations:		
Basic	85,119	83,515
Diluted	85,119	85,968

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

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LIMELIGHT NETWORKS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

	For the Three months Ended March 31, 2010 (Unaudited)	For the Three months Ended March 31, 2009 (Unaudited)
Cash flows from operating activities:		
Net (loss) income	$ (5,785)	$ 55,135
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	5,544	7,088
Share-based compensation	4,343	4,487
Provision for litigation		(65,645)
Accounts receivable charges	1,169	3,288
Loss (gain) on foreign exchange	49	(31)
Loss on sale of property and equipment	89	
Accretion of marketable securities	24	
Changes in operating assets and liabilities:		
Accounts receivable	(305)	(3,840)
Prepaid expenses and other current assets	685	(593)
Income taxes receivable	(53)	(157)
Other assets	(167)	(4,311)
Accounts payable	264	(1,223)
Deferred revenue	(3,105)	(822)
Other current liabilities	(2,081)	(5,144)
Net cash provided by (used in) operating activities	671	(11,768)
Cash flows from investing activities:		
Purchase of marketable securities	(16,755)	
Sale of marketable securities	28,000	21,300
Purchases of property and equipment	(4,250)	(754)
Purchased business, chors, net of cash acquired	(2,004)	
Net cash provided by investing activities	4,991	20,546
Cash flows from financing activities:		
Proceeds from exercise of stock options and warrants	27	76
Net cash provided by financing activities	27	76
Effect of exchange rate changes on cash	97	(243)
Net increase in cash and cash equivalents	5,786	8,611
Cash and cash equivalents at beginning of period	89,509	138,180
Cash and cash equivalents at end of period	$ 95,295	$ 146,791
Supplemental disclosure of cash flow information:		
Cash paid for interest	$ 1	$

Cash paid for income taxes	$	155	$	454
Property and equipment purchases remaining in accounts payable	$	1,078	$	4,073
Property and equipment purchases remaining in other current liabilities	$	329	$	
Equity issued in connection with chors acquisition	$	312	$	

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

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LIMELIGHT NETWORKS, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Nature of Business

Limelight Networks, Inc. (the Company) provides content delivery network (CDN) services in the United States, Europe, and Asia Pacific. The Company delivers content for traditional and emerging media companies or content providers, including businesses operating in the television, music, radio, newspaper, magazine, movie, videogame, software, and social media industries; online businesses operating e-commerce storefronts; and government organizations and corporate or enterprise businesses that operate a Web site.

2. Summary of Significant Accounting Policies and Use of Estimates

Basis of Presentation

The condensed consolidated financial statements include accounts of the Company and its wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated. The accompanying condensed consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles (GAAP) and pursuant to the rules and regulations of the Securities and Exchange Commission (SEC). These principles require management to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, together with amounts disclosed in the related notes to the condensed consolidated financial statements. Actual results and outcomes may differ from management s estimates, judgments and assumptions. Significant estimates used in these condensed consolidated financial statements include, but are not limited to, revenues, accounts receivable and related reserves, useful lives and realizability of long-term assets, capitalized software, provision for litigation, income and other taxes, the fair value of stock-based compensation and other contingent liabilities. Estimates are periodically reviewed in light of changes in circumstances, facts and experience. The effects of material revisions in estimates are reflected in the condensed consolidated financial statements prospectively from the date of the change in estimate. The accompanying condensed consolidated balance sheet as of March 31, 2010, the condensed consolidated statements of operations for the three months ended March 31, 2010 and 2009, and the condensed consolidated statements of cash flows for the three months ended March 31, 2010 and 2009, are unaudited. The condensed consolidated balance sheet information as of December 31, 2009 is derived from the audited consolidated financial statements which were included in our Annual Report on Form 10-K filed with the SEC on March 12, 2010. The consolidated financial information contained in this Quarterly Report on Form 10-Q should be read in conjunction with the audited consolidated financial statements and related notes contained in the Annual Report on Form 10-K filed on March 12, 2010.

The results of operations presented in this Quarterly Report on Form 10-Q are not necessarily indicative of the results that may be expected for the year ending December 31, 2010 or for any future periods. In the opinion of management, these unaudited condensed consolidated financial statements include all adjustments of a normal recurring nature that are necessary, in the opinion of management, to present fairly the results of all interim periods reported herein.

Revenue Recognition

The Company primarily derives revenue from the sale of content delivery network services to customers executing contracts having terms of one year or longer. These contracts generally commit the customer to a minimum monthly or annual level of usage and provide the rate at which the customer must pay for actual usage above the monthly or annual minimum. For these services, the Company recognizes the monthly minimum as revenue each month provided that an enforceable contract has been signed by both parties, the service has been delivered to the customer, the fee for the service is fixed or determinable and collection is reasonably assured. Should a customer s usage of the Company s services exceed the monthly minimum commit, the Company recognizes revenue for such excess in the period of the usage. For annual or other non-monthly period revenue commitments, the Company recognizes revenue monthly based upon the customer s actual usage each month of the commitment period and only recognizes any remaining committed amount for the applicable period in the last month thereof. The Company typically charges the customer an installation fee when the services are first activated. The installation fees are recorded as deferred revenue and recognized as revenue ratably over the estimated life of the customer arrangement. The Company also derives revenue from services and events sold as discrete, non-recurring events or based solely on usage. For these services, the Company recognizes revenue after an enforceable contract has been signed by both parties, the fee is fixed or determinable, the event or usage has occurred and collection is reasonably assured.

The Company has on occasion entered into multi-element arrangements. When the Company enters into such arrangements, each element is accounted for separately over its respective service period or at the time of delivery, provided that there is objective evidence of fair value for the separate elements. Objective evidence of fair value includes the price charged for the element when sold separately. If the fair value of each element cannot be objectively determined, the total value of the arrangement is recognized ratably over the entire service period to the extent that all services have begun to be provided, and other revenue recognition criteria has been satisfied.

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If the multi-element arrangement includes a significant software component, the Company recognizes software license revenue when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable and collection of the receivable is reasonably assured. If a software license contains an undelivered element, the vendor-specific objective evidence (VSOE) of fair value of the undelivered element is deferred and the revenue recognized once the element is delivered. The undelivered elements are primarily software support and professional services. VSOE of fair value of software support and professional services is based upon hourly rates or fixed fees charged when those services are sold separately. If VSOE cannot be established for all elements to be delivered, the Company defers all amounts received under the arrangement and does not begin to recognize revenue until the delivery of the last element of the contract has started. Subsequent to commencement of delivery of the last element, the Company commences revenue recognition. Amounts to be received under the contract are then included in the amortizable base and then recognized as revenue ratably over the remaining term of the arrangement until the Company has delivered all elements and has no additional performance obligations.

The Company has certain multi-element arrangements in place at March 31, 2010. Under these arrangements, the Company recognized approximately $2.9 million and $1.1 million in revenue for the three month periods ended March 31, 2010 and 2009, respectively. As of March 31, 2010, the Company had deferred revenue related to its multi-element arrangements of approximately $7.2 million that will be recognized over the remaining terms of the respective arrangements based on the underlying elements of the arrangements in accordance with the Company s revenue recognition policies.

The Company also sells services through a reseller channel. Assuming all other revenue recognition criteria are met, revenue from reseller arrangements is recognized over the term of the contract, based on the reseller s contracted non-refundable minimum purchase commitments plus amounts sold by the reseller to its customers in excess of the minimum commitments. These excess commitments are recognized as revenue in the period in which the service is provided. The Company records revenue under these agreements on a net or gross basis depending upon the terms of the arrangement. The Company typically records revenue gross when it has risk of loss, latitude in establishing price, credit risk and is the primary obligor in the arrangement. Reseller revenue for the three month period ended March 31, 2010 represented approximately 7% of the Company s total revenue compared to approximately 2% of our total revenue for the three month period ended March 31, 2009.

From time to time, the Company enters into contracts to sell services to unrelated companies at or about the same time the Company enters into contracts to purchase products or services from the same companies. If the Company concludes that these contracts were negotiated concurrently, the Company records as revenue only the net cash received from the vendor. For certain non-cash arrangements whereby the Company provides rack space and bandwidth services to several companies in exchange for advertising the Company records barter revenue and expense if the services are objectively measurable. The various types of advertising include radio, website, print and signage. The Company recorded barter revenue and expense of approximately $28,000 and $92,000, for the three months ended March 31, 2010 and 2009, respectively.

The Company may from time to time resell licenses or services of third parties. Revenue for these transactions is recorded when the Company has risk of loss related to the amounts purchased from the third party and the Company adds value to the license or service, such as by providing maintenance or support for such license or service. If these conditions are present, the Company recognizes revenue when all other revenue recognition criteria are satisfied.

At the inception of a customer contract for service, the Company makes an assessment as to that customer s ability to pay for the services provided. If the Company subsequently determines that collection from the customer is not reasonably assured, the Company records an allowance for doubtful accounts and bad debt expense or deferred revenue for all of that customer s unpaid invoices and ceases recognizing revenue for continued services provided until cash is received.

Cash and Cash Equivalents

The Company holds its cash and cash equivalents in checking, money market, and investment accounts with a minimum credit rating of at least A1/P1. The Company considers all highly liquid investments with maturities of three months or less when purchased to be cash equivalents.

Investments in Marketable Securities

Management determines the appropriate classification of its debt and equity securities at the time of purchase and reevaluates such classification as of each balance sheet date. Realized gains and losses and declines in value judged to be other than temporary are determined based on the specific identification method and are reported in the statements of operations.

The Company has classified its investments in equity and debt securities as available-for-sale. Available-for-sale investments are initially recorded at cost with temporary changes in fair value periodically adjusted through comprehensive income. The Company periodically reviews its investments for other-than-temporary declines in fair value based on the specific identification method and writes down investments to their fair value when an other-than-temporary decline has occurred.

The following is a summary of available-for-sale securities at March 31, 2010 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Government agency bonds	$ 41,385	$ 11	$ (26)	$ 41,370
Commercial paper	2,996			2,996
Corporate notes and bonds	9,131	65	(5)	9,191
Total available-for-sale debt securities	53,512	76	(31)	53,557
Publicly traded common stock	12		(4)	8
Total available-for-sale securities	$ 53,524	$ 76	$ (35)	$ 53,565

At March 31, 2010, the Company evaluated its investment portfolio in available-for-sale debt securities, and noted unrealized losses of $31,000 were due to fluctuations in interest rates. Management does not believe any of the unrealized losses represented an other-than-temporary impairment based on its evaluation of available evidence as of March 31, 2010. There have been no unrealized losses greater than twelve months. The Company s intent is to hold these investments until such time as these assets are no longer impaired.

Expected maturities can differ from contractual maturities because the issuers of the securities may have the right to prepay obligations without prepayment penalties, and the Company views its available-for-sale securities as available for current operations.

At March 31, 2010, the Company evaluated its investment portfolio in publicly traded common stock to determine if there had been decline in market value that was considered to be other-than-temporary. At March 31, 2010, the Company concluded that the decline in publicly traded common stock was temporary and adjusted it to fair value through comprehensive income.

The amortized cost and estimated fair value of the available-for-sale debt securities at March 31, 2010, by maturity, are shown below (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Available-for-sale debt securities				
Due in one year or less	$ 46,945	$ 75	$ (25)	$ 46,995
Due after one year and through five years	6,567	1	(6)	6,562
	$ 53,512	$ 76	$ (31)	$ 53,557

The following is a summary of available-for-sale securities at December 31, 2009 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Government agency bonds	$ 46,153	$ 16	$ (33)	$ 46,136
Commercial paper	8,996			8,996
Corporate notes and bonds	9,631	108	(1)	9,738
Total available-for-sale debt securities	64,780	124	(34)	64,870
Publicly traded common stock	13		(1)	12

Total available-for-sale securities	$ 64,793	$ 124	$ (35)	$ 64,882

The amortized cost and estimated fair value of the available-for-sale debt securities at December 31, 2009, by maturity, are shown below (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Available-for-sale debt securities				
Due in one year or less	$ 62,223	$ 124	$ (27)	$ 62,320
Due after one year and less than two years	2,557		(7)	2,550
	$ 64,780	$ 124	$ (34)	$ 64,870

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Accounts Receivable

Trade accounts receivable are recorded at the invoiced amounts and do not bear interest. The Company records reserves against its accounts receivable balance for service credits and for doubtful accounts. Estimates are used in determining both of these reserves. The allowance for doubtful accounts charges are included as a component of general and administrative expenses.

The Company s reserve for service credits increases as a result of specific service credits that are expected to be issued to customers during the ordinary course of business, as well as for billing disputes. These credits typically relate to customer disputes and billing adjustments and are recorded as a reduction of revenues. Decreases to the reserve are the result of actual credits being issued to customers, causing a corresponding reduction in accounts receivable.

During June 2009, the Company modified its approach to estimate the allowance for doubtful accounts. The Company began calculating the allowance for doubtful accounts using the aging of the accounts receivable method. Under this method, the allowance for doubtful accounts is based upon a calculation that uses the Company s aging of accounts receivable and applies a reserve percentage to the specific age of the receivable to estimate the allowance for bad debt. Prior to June 2009 the allowance for doubtful accounts was determined based upon a review of outstanding balances and payment history on a customer-specific, account-by-account basis and certain percentages were applied to specific accounts. This modification did not materially effect the reserves required. These estimates could change significantly if the Company s customers financial condition changes or if the economy in general deteriorates. The Company performs ongoing credit evaluations of its customers. If such an evaluation indicates that payment is no longer reasonably assured for current services provided, any future services provided to that customer will result in the deferral of revenue until the Company receives payment or it determines payment is reasonable assured.

Goodwill and Other Intangible Assets

Goodwill represents costs in excess of fair values assigned to the underlying net assets of the acquired company. Goodwill is not amortized but instead is tested for impairment annually or more frequently if events or changes in circumstances indicate the asset might be impaired.

The Company s other intangible assets represent existing technologies, domain names and customer relationships and contracts intangibles. Other intangible assets are amortized over their respective estimated lives, ranging from one to four years. In the event that facts and circumstances indicate intangibles or other long-lived assets may be impaired, the Company evaluates the recoverability and estimated useful lives of such assets.

Use of Estimates

The preparation of financial statements in conformity with United States generally accepted accounting principles requires management to make estimates, judgments and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Actual results and outcomes could differ from those estimates. Significant estimates used in these condensed consolidated financial statements include, but are not limited to, revenues, accounts receivable and related reserves, useful lives and realizability of long-term asset, provision for litigation, capitalized software, income and other taxes, the fair value of share-based compensation and other contingent liabilities.

Recently Issued Accounting Pronouncements

In October 2009, the FASB issued a new accounting standard which provides guidance for arrangements with multiple deliverables. Specifically, the new standard requires an entity to allocate consideration at the inception of an arrangement to all of its deliverables based on the relative selling prices. In absence of the vendor specific objective evidence or third party evidence of the selling price, consideration must be allocated to the deliverables based on management s best estimate of the selling prices. In addition, the new standard eliminates the use of the residual method of allocation. In October 2009, the FASB also issued a new accounting standard which changes revenue recognition for tangible products containing software and hardware elements. Specifically, tangible products containing software and hardware that function together to deliver the tangible products essential functionality are scoped out of the existing software revenue recognition guidance and will be accounted for under the multiple-element arrangements revenue recognition guidance discussed above. Both standards will be effective for the Company in the first quarter of 2011. Early adoption is permitted. The Company will adopt these new accounting standards in the first quarter of 2011 using the prospective method.

In February 2010, the Financial Accounting Standards Board (FASB) issued FASB Accounting Standards Update 2010-09, *Subsequent Events: Amendments to Certain Recognition and Disclosure Requirements* (ASU 2010-09), which amends FASB ASC Topic 855, *Subsequent Events*. The update provides that SEC filers, as defined in ASU 2010-09, are no longer required to disclose the date through which subsequent events have been evaluated in originally issued and revised financial statements. The update also requires SEC filers to evaluate subsequent events through the date the financial statements are issued rather than the date the financial statements are available to be issued. The Company adopted ASU 2010-09 upon issuance. This update had no impact on the Company s financial position, results of operations or cash flows.

As of January 1, 2010, the Company adopted Accounting Standards Update 2010-06 *Fair Value Measurements and Disclosures (*Topic 820) *Improving Disclosures about Fair Value Measurements*. This new accounting standard requires new disclosures and clarifies certain existing disclosure requirements about fair value measurements. The standard requires a reporting entity to disclose significant transfers in and out of Level 1 and Level 2 fair value measurements, to describe the reasons for the transfers and to present separately information about purchases, sales, issuances and settlements for fair value measurements using significant unobservable inputs. The standard is effective for interim and annual reporting periods beginning after December 15, 2009, except for the disclosures about purchases, sales, issuances and settlements in the roll forward of activity in Level 3 fair value measurements, which is effective for interim and annual reporting periods beginning after December 15, 2010; early adoption is permitted. The adoption of the standard did not have any material impact on the Company s financial position, results of operations or cash flows.

As of January 1, 2010, the Company adopted Accounting Standards Update 2010-02, *Consolidation (*Topic 810) *Accounting and Reporting for Decreases in Ownership of a Subsidiary.* This new accounting standard clarifies the scope of the decrease in ownership provisions and expands the disclosure requirements about deconsolidation of a subsidiary or de-recognition of a group of assets. The standard is effective beginning in the first interim or annual reporting period ending on or after December 15, 2009 and thus is effective for the Company s first quarter reporting in 2010. The amendments in the standard must be applied retrospectively to the first period that an entity adopted SFAS 160. The adoption of the standard did not have any material impact on the Company s financial position, results of operations or cash flows.

3. Business Acquisitions

chors GmbH

On January 27, 2010 the Company acquired chors GmbH or chors, an on-line and direct marketing solutions provider located in Germany. The aggregate purchase price, including the earn-out provision consisted of approximately $2.8 million of cash, of which approximately $2.5 million was paid at closing and up to 860,000 shares of the Company s common stock, of which 86,000 shares were issued at closing. The preliminary fair value of the common stock issued as consideration for chors was determined on the basis of the closing market price of the Company s common shares on the acquisition date. For purposes of the tentative purchase price allocation, the Company has used a total consideration value of approximately $5.8 million. In addition, the Company incurred approximately $0.2 million of transaction costs, which primarily consisted of fees for legal and financial advisory services. These transaction costs were included in general and administrative expenses in the Company s statement of operations for the three months ended March 31, 2010. The Company s consolidated financial statements include the results of operations of chors from the date of acquisition. The historical results of operations of chors were not significant to the Company s consolidated results of operations for the periods presented. The total purchase consideration was allocated to the assets acquired and liabilities assumed at their estimated fair values as of the date of acquisition, as determined by management. The purchase price allocation is preliminary and a final determination of purchase accounting adjustments will be made upon the finalization of the Company s integration activities, which are expected to be completed during the second quarter of 2010. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed has been recorded as goodwill. In accordance with current accounting standards, goodwill associated with the chors acquisition will not be amortized and will be tested for impairment at least annually. The preliminary allocation of the aggregate purchase price of approximately $5.8 million as determined by management includes: tangible assets of $0.9 million, identifiable intangible assets of $4.2 million, assumed liabilities of $0.6 million, and goodwill of $1.3 million. chors offers consulting and software development to digital media advertising agencies and companies designed to automate targeting and delivery and improve the efficacy of their online marketing efforts.

EyeWonder Acquisition

On December 21, 2009 the Company entered into an Agreement and Plan of Merger to acquire EyeWonder, Inc., a rich media ad serving vendor and on April 30, 2010, the Company completed its acquisition of EyeWonder. Under the terms of the Merger Agreement, the former holders of EyeWonder securities that were outstanding immediately prior to the completion of the merger will receive, in the aggregate, approximately $49.6 million in cash and 9,726,301 shares of the Company s common stock with a determined value of approximately $39.1 million based on the closing price of the Company s common stock on April 30, 2010. In addition, the former EyeWonder securityholders may receive up to 4,774,000 shares of the Company s common stock and approximately $0.3 million in cash in approximately April 2011 if certain performance metrics are satisfied. Under the terms of the Merger Agreement, 3,013,699 shares of the Company s common stock have been set aside in an escrow account and will be held until June 28, 2011, subject to any unresolved indemnification claims.

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4. Accounts Receivable

Accounts receivable include (in thousands):

	As of March 31, 2010	As of December 31, 2009
Accounts receivable	$ 29,838	$ 29,457
Unbilled accounts receivable	5,657	6,132
	35,495	35,589
Less: credit allowance	(1,190)	(1,190)
Less: allowance for bad debt	(8,477)	(8,036)
Total accounts receivable, net	$ 25,828	$ 26,363

5. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets include (in thousands):

	As of March 31, 2010	As of December 31, 2009
Prepaid bandwidth and backbone services	$ 3,644	$ 3,511
Non-income taxes receivable (VAT)	2,554	3,449
Interest receivable	317	413
Employee advances and prepaid recoverable commissions	192	147
Other	2,212	2,134
Total prepaid expenses and other current assets	$ 8,919	$ 9,654

The Company is subject to and has paid Value Added Tax (VAT) in certain foreign jurisdictions in which it operates. Based on analysis and application of the VAT laws in particular locations, the Company believes it is entitled to a refund of VAT previously paid.

In January and September 2009, the Company entered into multi-year arrangements with a telecommunications provider for additional bandwidth and backbone capacity. The agreements required the Company to make advanced payments for future services to be received.

6. Goodwill and Other Intangible Assets

The Company has recorded goodwill and other intangible assets as a result its business acquisition of Kiptronic that occurred in May 2009 and its acquisition of chors in January 2010.

The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed has been recorded as goodwill. As of March 31, 2010, the Company has recorded goodwill of approximately $1.9 million which includes management s preliminary allocation of the purchase price of chors. The final determination of purchase accounting adjustments will be made upon the finalization of the Company s integration activities, which are expected to be completed during the second quarter of 2010.

The Company reviews goodwill for impairment annually or whenever events or changes in circumstances indicate that the carrying amount may exceed their fair value. The Company concluded that it had one reporting unit and assigned the entire balance of goodwill to this reporting unit as of March 31, 2010.

Other intangible assets including the preliminary allocation of acquired intangibles from chors that are subject to amortization consist of the following (in thousands):

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	March 31, 2010		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Existing technologies	$ 1,905	$ (150)	$ 1,755
Customer relationships and contracts	1,370	(28)	1,342

	March 31, 2010		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Non-compete agreements	922	(39)	883
Usage contract	339	(36)	303
Domain names	11	(10)	1
Trademarks	8	(1)	7
Total other intangible assets	$ 4,555	$ (264)	$ 4,291

	December 31, 2009		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Existing technologies	$ 440	$ (74)	$ 366
Domain names	11	(7)	4
Customer relationships and contracts	12	(12)	
Total other intangible assets	$ 463	$ (93)	$ 370

Aggregate expense related to amortization of other intangible assets for the three months ended March 31, 2010 and 2009 was $0.2 million and $0, respectively. Based on the Company s other intangible assets as of March 31, 2010, aggregate expense related to amortization of other intangible assets is expected to be $0.7 million for the remainder of 2010, and $0.9 million, $0.7 million, $0.7 million and $0.4 million for fiscal years 2011, 2012, 2013 and 2014, respectively.

7. Property and Equipment

Property and equipment include (in thousands):

	As of March 31, 2010	As of December 31, 2009
Network equipment	$ 120,636	$ 115,505
Computer equipment	5,863	5,493
Furniture and fixtures	719	691
Leasehold improvements	2,816	2,812
Other equipment	482	473
	130,516	124,974
Less: accumulated depreciation	(94,740)	(89,450)
	$ 35,776	$ 35,524

8. Other Assets

Other assets include (in thousands):

	As of March 31, 2010	As of December 31, 2009
Prepaid bandwidth and backbone services	$ 6,644	$ 7,413
Vendor deposits and other	1,655	719
Total other assets	$ 8,299	$ 8,132

In January and September 2009, the Company entered into multi-year arrangements with a telecommunications provider for additional bandwidth and backbone capacity. The agreements required the Company to make advanced payments for future services to be received.

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9. Other Current Liabilities

Other current liabilities consist of the following (in thousands):

	As of March 31, 2010	As of December 31, 2009
Contingent consideration liability	$ 3,092	$
Accrued cost of revenue	3,060	2,822
Accrued legal fees	2,280	2,702
Accrued compensation and benefits	2,093	2,827
Income taxes payable	1,782	1,905
Non income taxes payable (VAT)	660	747
Other accrued expenses	2,528	3,137
Total other current liabilities	$ 15,495	$ 14,140

The Company has determined that certain transactions are subject to sales tax in some of the states in which it operates. Accordingly, the Company has recorded a liability for those amounts which are probable and reasonably estimated.

10. Litigation

In June 2006, Akamai Technologies, Inc., or Akamai, and the Massachusetts Institute of Technology, or MIT, filed a lawsuit against the Company in the United States District Court for the District of Massachusetts alleging that the Company was infringing two patents assigned to MIT and exclusively licensed by MIT to Akamai, United States Patent No. 6,553,413 (the 413 patent) and United States Patent No. 6,108,703 (the 703 patent). In September 2006, Akamai and MIT expanded their claims to assert infringement of a third, recently issued patent United States Patent No. 7,103,645 (the 645 patent). In February 2008, a jury returned a verdict in this lawsuit, finding that the Company infringed four claims of the 703 patent at issue and rejecting the Company s invalidity defenses for the period April 2005 through December 31, 2007. The jury awarded an aggregate of approximately $45.5 million which includes lost profits, reasonable royalties and price erosion damages. In addition, the jury awarded prejudgment interest which the Company estimated to be $2.6 million at December 31, 2007. The Company recorded an aggregate $48.1 million as a provision for litigation as of December 31, 2007. During the year ended December 31, 2008, the Company estimated its revenue from alleged infringing methods totaled approximately 25% of total revenue. The Company recorded a potential additional provision for litigation totaling $15.5 million, plus additional interest of $2.0 million, for the year ended December 31, 2008. The total provision for litigation at December 31, 2008 was $65.6 million.

On July 1, 2008, the court denied the Company s Motions for Judgment as a Matter of Law (JMOL), Obviousness, and a New Trial. The court also denied Akamai s Motion for Permanent Injunction as premature and its Motions for Summary Judgment regarding the Company s equitable defenses. The court conducted a bench trial in November 2008 regarding the Company s equitable defenses. The Company also filed a motion for reconsideration of the court s earlier denial of the Company s motion for JMOL. The Company s motion for JMOL was based largely upon a clarification in the standard for a finding of joint infringement articulated by the Federal Circuit in the case of *Muniauction, Inc. v. Thomson Corp.* (the *Muniauction* Case), released after the court denied the Company s initial motion for JMOL. On April 24, 2009 the court issued its order and memorandum setting aside the adverse jury verdict and ruling that the Company did not infringe Akamai s 703 patent and that the Company is entitled to judgment as a matter of law. Based upon the court s April 24, 2009 order the Company has reversed the $65.6 million provision for litigation previously recorded for this lawsuit as the Company no longer believes that payment of any amounts represented by the litigation provision is probable. The court entered final judgment in favor of the Company on May 22, 2009, and Akamai filed its notice of appeal of the court s decision on May 26, 2009 and its appeal brief on September 15, 2009 with the United States Court of Appeals for the Federal Circuit. The Company filed its reply brief on December 9, 2009. The court has set a hearing date in early June 2010. The Company intends to vigorously defend the action. The Company is not able at this time to estimate the range of potential loss nor, in light of the favorable court order, does it believe that a loss is probable. Therefore, there is no provision for this lawsuit in the Company s financial statements.