Limelight Networks, Inc.
Form 10-Q
November 06, 2009
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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 September 30, 2009

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	***(I.R.S. Employer***
incorporation or organization)	***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 November 3, 2009: 84,674,389 shares.

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LIMELIGHT NETWORKS, INC.

FORM 10-Q

Quarterly Period Ended September 30, 2009

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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)

	September 30, 2009 (Unaudited)	December 31, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 102,447	$ 138,180
Marketable securities	50,367	36,463
Accounts receivable, net of reserves of $9,149 at September 30, 2009 and $7,565 at December 31, 2008, respectively	27,692	33,482
Income taxes receivable	184	7
Prepaid expenses and other current assets	9,206	7,834
Total current assets	189,896	215,966
Property and equipment, net	39,653	40,185
Marketable securities, less current portion	16	13
Goodwill	619	
Other intangible assets, net	404	
Other assets	9,048	628
Total assets	$ 239,636	$ 256,792
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 7,180	$ 8,920
Deferred revenue, current portion	12,077	9,865
Provision for litigation		65,645
Other current liabilities	8,905	14,928
Total current liabilities	28,162	99,358
Deferred revenue, less current portion	3,006	7,303
Total liabilities	31,168	106,661
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 September 30, 2009; 84,667 and 83,405 shares issued and outstanding at September 30, 2009 and December 31, 2008, respectively	85	83
Additional paid-in capital	304,466	290,593
Accumulated other comprehensive income	105	260
Accumulated deficit	(96,188)	(140,805)

Total stockholders equity		208,468		150,131
Total liabilities and stockholders equity	$	239,636	$	256,792

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 September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenues	$ 32,530	$ 33,116	$ 98,038	$ 93,632
Cost of revenue:				
Cost of services	14,889	14,950	44,757	43,168
Depreciation network	6,018	6,607	18,699	18,812
Total cost of revenue	20,907	21,557	63,456	61,980
Gross margin	11,623	11,559	34,582	31,652
Operating expenses:				
General and administrative	6,405	15,112	24,714	37,346
Sales and marketing	8,060	8,577	23,915	25,684
Research and development	2,024	2,008	5,878	5,293
Depreciation and amortization	627	343	1,699	901
Provision for litigation judgment		2,343	(65,645)	16,220
Total operating expenses	17,116	28,383	(9,439)	85,444
Operating (loss) income	(5,493)	(16,824)	44,021	(53,792)
Other income (expense):				
Interest expense	(11)	(11)	(33)	(43)
Interest income	330	1,203	1,050	4,428
Other (expense) income	15	410	131	203
Total other income	334	1,602	1,148	4,588
(Loss) income before income taxes	(5,159)	(15,222)	45,169	(49,204)
Income tax expense (benefit)	61	130	552	(78)
Net (loss) income	$ (5,220)	$ (15,352)	$ 44,617	$ (49,126)
Net (loss) income per weighted average share:				
Basic	$ (0.06)	$ (0.18)	$ 0.53	$ (0.59)
Diluted	$ (0.06)	$ (0.18)	$ 0.51	$ (0.59)

Shares used in per weighted average share calculations:

Basic	84,489	83,022	84,012	82,845
Diluted	84,489	83,022	87,708	82,845

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 Nine months Ended September 30, 2009	2008
	(Unaudited)	
Cash flows from operating activities:		
Net income (loss)	$ 44,617	$ (49,126)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	20,398	19,713
Share-based compensation	13,137	12,549
Deferred income tax benefit		(82)
Provision for litigation	(65,645)	16,220
Accounts receivable charges	4,239	5,289
Loss (gain) on foreign exchange	181	(18)
Accretion of marketable securities	(455)	(421)
Loss on marketable securities		71
Changes in operating assets and liabilities:		
Accounts receivable	1,793	(15,157)
Prepaid expenses and other current assets	(1,347)	(3,948)
Income taxes receivable	(176)	473
Other assets	(8,314)	784
Accounts payable	(5,198)	(2,359)
Accounts payable, related parties		(230)
Deferred revenue	(2,085)	4,326
Other current liabilities	(6,704)	4,733
Net cash used in operating activities	(5,559)	(7,183)
Cash flows from investing activities:		
Purchase of marketable securities	(45,735)	(65,125)
Sale of marketable securities	32,400	95,025
Purchases of property and equipment	(16,648)	(14,536)
Cash acquired in business acquisition	22	
Net cash (used in) provided by investing activities	(29,961)	15,364
Cash flows from financing activities:		
Escrow funds returned from share repurchase		1,070
Proceeds from exercise of stock options and warrants	240	191
Net cash provided by financing activities	240	1,261
Effect of exchange rate changes on cash	(453)	(120)
Net (decrease) increase in cash and cash equivalents	(35,733)	9,322
Cash and cash equivalents at beginning of period	138,180	113,824
Cash and cash equivalents at end of period	$ 102,447	$ 123,146

Supplemental disclosure of cash flow information:				
Cash paid for income taxes	$	751	$	114
Property and equipment purchases remaining in accounts payable	$	3,373	$	1,395
Equity issued in connection with acquisition of business	$	962	$	

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

LIMELIGHT NETWORKS, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Nature of Business

Limelight Networks, Inc. (the Company) is a provider of high-performance content delivery network (CDN) services. 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 as well as enterprises and government entities doing business online.

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 U.S. 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 financial statements include, but are not limited to, revenues, accounts receivable and related reserves, useful lives and realizability of long-term asset, capitalized software, provision for litigation, income and other taxes and the fair value of stock-based compensation. 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 September 30, 2009, the condensed consolidated statements of operations for the three and nine months ended September 30, 2009 and 2008, and the condensed consolidated statements of cash flows for the nine months ended September 30, 2009 and 2008, are unaudited. The condensed consolidated balance sheet information as of December 31, 2008 is derived from the audited consolidated financial statements which were included in the Company s Annual Report on Form 10-K filed with the SEC on March 13, 2009. 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 13, 2009.

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, 2009 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.

As of January 1, 2009, the Company adopted ASC Topic 805 (ASC 805), (formerly SFAS No. 141(R), Business Combinations). Under ASC 805, an entity is required to recognize the assets acquired, the liabilities assumed, contractual contingencies, and contingent consideration at their fair value on the acquisition date. It further requires that acquisition-related costs be recognized separately from the acquisition and expensed as incurred, restructuring costs generally be expensed in periods subsequent to the acquisition date and changes in accounting for deferred tax asset valuation allowances and acquired income tax uncertainties after measurement period impact income tax expense. In addition, acquired in-process research and development is capitalized as an intangible asset and amortized over its estimated useful life. ASC 805 also provides guidance in accounting for step acquisitions, contingent liabilities, goodwill, contingent consideration, and other aspects of business combinations. The Company has recorded its acquisition in 2009 in accordance with ASC 805.

As of January 1, 2009, the Company adopted ASC Topic 810 (ASC 810), (formerly SFAS No. 160, Noncontrolling Interests in Consolidated Financial Statements). ASC 810 requires that ownership interests in subsidiaries held by parties other than the parent be presented separately within equity in the consolidated balance sheet. ASC 810 also requires that the consolidated net income attributable to the parent and to the noncontrolling interests be identified and displayed on the face of the consolidated income statement. Changes in ownership interests, deconsolidation and additional disclosures regarding noncontrolling interests are also addressed in the new guidance. As of September 30, 2009, the Company had no noncontrolling interests recorded in its balance sheet.

In February 2008, the FASB issued an amendment (formerly FASB Staff Position (FSP) No. 157-2) to ASC Topic 820 (ASC 820). The amendment to the standard delayed the effective date of ASC 820 for non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis, to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years. In February 2008, the FASB also issued another amendment (formerly FSP No. 157-1) to ASC 820, that would exclude leasing transactions accounted for under ASC Topic 840 (formerly SFAS No. 13, Accounting for Leases), and its related interpretive accounting pronouncements. The adoption of the standard did not have a material impact on its consolidated financial statements.

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As of January 1, 2009, the Company adopted ASC Topic 815 (ASC 815), (formerly Statement No. 161, Disclosures about Derivative Instruments and Hedging Activities). ASC 815 requires entities that utilize derivative instruments to provide qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses on derivative instruments, and disclosure about credit-risk-related contingent features in derivative agreements. ASC 815 also requires entities to disclose additional information about the amounts and location of derivatives located within the financial statements, how the provisions of ASC Topic 815 have been applied, and the impact that hedges have on an entity s financial position, financial performance, and cash flows. As of September, 2009, the Company does not have any derivative instruments and/or hedging activities. The adoption of this standard did not have a material effect on its financial position or results of operations.

As of January 1, 2009, the Company adopted ASC Topic 260 (ASC 260), (formerly FSP No. EITF 03-6-1, Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities). ASC 260 clarifies that unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents, whether paid or unpaid, are participating securities and requires such awards be included in the computation of earnings per share (EPS) pursuant to the two-class method. ASC 260 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those years. ASC 260 requires all prior-period EPS data presented to be adjusted retrospectively. The Company has awarded restricted stock which included non-forfeitable dividend rights. The Company has applied this guidance in the earnings per share calculation as of September 30, 2009 and 2008. The impact of adoption changed previously reported net loss per share for the three and nine month periods ended September 30, 2008 from ($0.19) to ($0.18) per share and ($0.60) to ($0.59), per share, respectively.

In April 2009, the Financial Accounting Standards Board, or FASB, issued two FASB Staff Positions, or FSPs, to address concerns about (1) measuring the fair value of financial instruments when the markets become inactive and quoted prices may reflect distressed transactions and (2) recording impairment charges on investments in debt securities. The FASB also issued a third FSP to require disclosures of fair values of certain financial instruments in interim financial statements. Below is a summary of the three FSPs:

ASC Topic 820-10-35 (ASC 820-10-35), (formerly FSP No. FAS 157-4, Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly), provides additional guidance to highlight and expand on the factors that should be considered in estimating fair value when there has been a significant decrease in market activity for a financial asset. ASC 820-10-35 also requires new disclosures relating to fair value measurement inputs and valuation techniques (including changes in inputs and valuation techniques).

ASC Topic 320-10-65 (ASC 320-10-65), (formerly FSP No. FAS 115-2 and FAS 124-2, Recognition and Presentation of Other-Than-Temporary Impairments), amends the other-than-temporary impairment guidance for debt securities to make the guidance more operational and to improve the presentation and disclosure of other-than-temporary impairments in the financial statements. The most significant change is a revision to the amount of other-than-temporary loss of a debt security recorded in the earnings.

ASC Topic 825-10-65, (formerly FSP No. FAS 107-1 and APB 28-1, Interim Disclosures about Fair Value of Financial Instruments) requires disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies, as well as in annual financial statements.

These FSPs apply to both interim and annual periods and became effective beginning April 1, 2009. The Company adopted these standards for the quarter ended June 30, 2009. The adoption of these standards did not have a material impact on the Company s financial condition or results of operations.

In May 2009, the FASB issued ASC Topic 855 (ASC 855), (formerly SFAS No. 165, Subsequent Events). ASC 855 establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued, and specifically requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date, that is, whether that date represents the date the financial statements were issued or were available to be issued. The Company adopted ASC 855 for the quarter ended June 30, 2009 and has made the required disclosures herein.

In June 2009, the FASB issued ASC Topic 105 (ASC 105), (formerly SFAS No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles*). ASC 105 establishes the FASB ASC as the single source of authoritative non-governmental US GAAP. The standard is effective for interim and annual periods ending after September 15, 2009. The Company adopted the provisions of the standard on September 30, 2009. The adoption of the standard did not have a material impact on the financial statements.

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Revenue Recognition

The Company recognizes service revenues in accordance with ASC Topic 605 (ASC 605), (formerly the SEC s Staff Accounting Bulletin No. 104, Revenue Recognition , and the FASB s Emerging Issues Task Force Issue No. 00-21, *Revenue Arrangements with Multiple Deliverables).* Revenue is recognized when the price is fixed or determinable, persuasive evidence of an arrangement exists, the service is performed and collectability of the resulting receivable is reasonably assured.

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.

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 level of usage on a calendar month basis and provide the rate at which the customer must pay for actual usage above the monthly 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, the Company recognizes revenue for such excess in the period of the usage. 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 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.

If the multi-element arrangement includes a significant software component, the Company applies the provisions of ASC Topic 985-605 (formerly Statement of Position, 97-2, (SOP 97-2) Software Revenue Recognition , as amended by SOP 98-9, Modifications of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions). 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.

One of the Company s multi-element arrangements provide for consulting services related to the development of a custom CDN solution, the cross-license of certain technologies, including certain components of the Company s CDN software and technology, and post-contract customer support (PCS) for both the custom CDN solution and the software component (the Multi-Element Arrangement). The agreement also contains a commitment by the customer to transmit a certain amount of traffic over the Company s network during a five-year period from commencement of the agreement or be subject to penalty payments.

For this arrangement the Company does not have VSOE of fair value to allocate the fee to the separate elements of the Multi-Element Arrangement as it had not licensed the intellectual property and software components, nor PCS separately. Accordingly the Company will recognize the revenues related to the professional services, license and PCS ratably over the four-year period over which the PCS has been contracted as allowed for by ASC 985-605. Because delivery of the license and PCS elements of this arrangement had not occurred at June 30, 2007, revenue on all services provided to this customer during the three months ended June 30, 2007, including the ongoing content delivery services, and the direct incremental costs incurred associated with these revenues, were deferred until such time as delivery occurs and PCS has commenced. Concurrently with the signing of the Multi-Element Arrangement, the Company also extended and amended a content delivery contract entered into originally in 2005. The arrangement for transmitting content is not a required element of the new software and node development project commencing under the Multi-Element Arrangement. The Company will continue to receive payments on a usage basis under the content delivery contract. Given that the services are priced at market rates and subject to regular adjustments and are cancelable with thirty days notice, the amount of revenue and pricing is considered variable and contingent until services are delivered. As such, the Company has attributed revenue for the service as one that is contingent and becomes measurable as the services are delivered under the terms of the content delivery contract. Accordingly, the Company will record revenue on a monthly basis in an amount based upon usage. Because the content delivery agreement was amended concurrently with the Multi-Element Arrangement, the Company deferred revenue recognition until commencement of delivery of the last element of the Multi-Element Arrangement, which was determined to be July 27, 2007. For the three and nine month periods ended September 30, 2009, the Company recognized approximately $1.8 million and $5.1 million, respectively, in revenue and approximately $21,000 and $63,000, respectively, in costs of revenue. During the three and nine month periods ended September 30, 2008, the Company recognized approximately $1.5 million and $3.5 million, respectively, in revenue and approximately $21,000 and $63,000, respectively, in costs of revenue. As of September 30, 2009, the Company had remaining deferred revenue related to the multi-element arrangement of $10.3 million, which is expected to be recognized ratably over the remaining 17 month contract period and had remaining related deferred costs of $0.1 million.

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 in accordance with ASC Topic 605-45 (formerly EITF 99-19, *Recording Revenue Gross as a Principal Versus Net as an Agent*). 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.

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 $-0- and $138,000, respectively, for the three month period ended September 30, 2009 and 2008, and approximately $172,000 and $435,000, for the nine month period ended September 30, 2009 and 2008, 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.

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 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

The Company accounts for its investments in debt and equity securities under ASC Topic 320 (formerly FASB s Statement of Financial Accounting Standards (SFAS) No. 115, *Accounting for Certain Investments in Debt and Equity Securities* and FASB Staff Position, or FSP, SFAS No. 115-1, *The Meaning of Other-Than-Temporary Impairment and its Application to Certain Investments*). Management determines the appropriate classification of such 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 is 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.

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The following is a summary of available-for-sale securities at September 30, 2009 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Government agency bonds	$ 36,653	$ 20	$ (3)	$ 36,670
Commercial paper	5,994		(1)	5,993
Corporate notes and bonds	7,622	87	(5)	7,704
Total available-for-sale debt securities	50,269	107	(9)	50,367
Publicly traded common stock	13	3		16
Total available-for-sale securities	$ 50,282	$ 110	$ (9)	$ 50,383

At September 30, 2009, the Company evaluated its investment portfolio, and noted unrealized losses of $9,000 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 September 30, 2009. The Company s intent is to hold these investments to 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 September 30, 2009, the Company evaluated its investment portfolio in publicly traded common stock to determine if there had been a decrease in market value that was considered to be other-than-temporary. At September 30, 2009, the Company concluded that there had been no decrease in market value of the publicly traded common stock.

The amortized cost and estimated fair value of the available-for-sale debt securities at September 30, 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	$ 43,718	$ 20	$ (9)	$ 43,729
Due after one year and through five years	6,551	87		6,638
	$ 50,269	$ 107	$ (9)	$ 50,367

The following is a summary of available-for-sale securities at December 31, 2008 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Government agency bonds	$ 15,002	$ 36	$	$ 15,038
Commercial paper	4,282	8		4,290
Corporate notes and bonds	17,195	62	(122)	17,135
Total available-for-sale debt securities	36,479	106	(122)	36,463
Publicly traded common stock	16		(3)	13

Total available-for-sale securities	$	36,495	$	106	$	(125)	$	36,476

The amortized cost and estimated fair value of the available-for-sale debt securities at December 31, 2008, 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	$	19,384	$	44	$		$	19,428
Due after one year and through two years		17,095		62		(122)		17,035
	$	36,479	$	106	$	(122)	$	36,463

Recently Issued Accounting Pronouncements

In August 2009, the FASB issued Accounting Standards Update (ASU) No. 2009-05, Fair Value Measurements and Disclosures (Topic 820) Measuring Liabilities at Fair Value. This ASU clarifies the application of certain valuation techniques in circumstances in which a quoted price in an active market for the identical liability is not available and clarifies that when estimating the fair value of a liability, the fair value is not adjusted to reflect the impact of contractual restrictions that prevent its transfer. The guidance provided in this ASU becomes effective for the Company on October 1, 2009. The Company has evaluated this ASU and has determined that there are no significant impacts to its financial position or results of operations.

In September 2009, the FASB issued ASU No. 2009-12 (Topic 820: Fair Value Measurements and Disclosures), Investments in Certain Entities That Calculate Net Asset Value per Share (or Its Equivalent). This ASU provides amendments for the fair value measurement of investments to create a practical expedient to measure the fair value of an investment in certain entities on the basis of the net asset value per share of the investment (or its equivalent) determined as of the reporting entity s measurement date. Therefore, certain attributes of the investment (such as restrictions on redemption) and transaction prices from principal-to-principal or brokered transactions will not be considered in measuring the fair value of the investment if the practical expedient is used. The amendment in this ASU also requires disclosures by major category of investment about the attributes of those investments, such as the nature of any restrictions on the investor s ability to redeem its investments at measurement date, any unfunded commitments, and the investment strategies of the investees. The amendments in this ASU are effective for interim and annual periods ending after December 15, 2009. Early application is permitted. The Company is currently evaluating this new ASU.

In October 2009, the FASB issued ASU No. 2009-13 (Topic 605: Revenue Recognition), Multiple-Deliverable Revenue Arrangements. This ASU establishes the accounting and reporting guidance for arrangements including multiple revenue-generating activities. This ASU provides amendments to the criteria for separating deliverables, measuring and allocating arrangement consideration to one or more units of accounting. The amendments in this ASU also establish a selling price hierarchy for determining the selling price of a deliverable. Significantly enhanced disclosures are also required to provide information about a vendor s multiple-deliverable revenue arrangements, including information about the nature and terms, significant deliverables, and its performance within arrangements. The amendments also require providing information about the significant judgments made and changes to those judgments and about how the application of the relative selling-price method affects the timing or amount of revenue recognition. The amendments in this ASU are effective prospectively for revenue arrangements entered into or materially modified in the fiscal years beginning on or after June 15, 2010. Early application is permitted. The Company is currently evaluating this new ASU.

In October 2009, the FASB issued ASU No. 2009-14 (Topic 985: Software), Certain Revenue Arrangements That Include Software Elements. This ASU changes the accounting model for revenue arrangements that include both tangible products and software elements that are essential to the functionality, and scopes these products out of current software revenue guidance. The new guidance will include factors to help companies determine what software elements are considered essential to the functionality. The amendments will now subject software-enabled products to other revenue guidance and disclosure requirements, such as guidance surrounding revenue arrangements with multiple-deliverables. The amendments in this ASU are effective prospectively for revenue arrangements entered into or materially modified in the fiscal years beginning on or after June 15, 2010. Early application is permitted. The Company is currently evaluating this new ASU.

3. Business Acquisition

On May 20, 2009 the Company entered into an Asset Purchase Agreement to acquire substantially all of the assets of Kiptronic Inc. (Kiptronic) for approximately $1.0 million. The aggregate purchase price of approximately $1.0 million consisted of 213,334 shares of the Company s common stock. The fair value of the common shares issued as consideration for Kiptronic was determined on the basis of the closing market price of the Company s common shares on the acquisition date. In addition, the Company incurred $0.1 million of transaction costs, which primarily consisted of fees for legal and financial advisory services. These transaction costs are included in general and administrative expenses in the Company s statement of operations for the nine month period ended September 30, 2009. The Company s consolidated financial statements include the results of operations of Kiptronic from the date of acquisition. The historical results of operations of Kiptronic 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 and, with respect to identifiable intangible assets, by management with the assistance of an appraisal provided by a third-party valuation firm. The purchase price allocation was finalized during the quarter ended September 30, 2009. 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 Kiptronic acquisition will not be amortized and will be tested for impairment at least annually as required by ASC Topic 350 (formerly Statement of Financial Accounting Standards (SFAS) No. 142, Goodwill and Other Intangible Assets) (see Note 12). The allocation of the aggregate purchase price includes: tangible assets of $0.2 million, identifiable intangible assets of $0.5 million, assumed liabilities of $0.3 million, and goodwill of $0.6 million. Kiptronic develops mobility and monetization solutions for content publishers. The combination of the Company s distributed computing and delivery platform with Kiptronic device-targeting and dynamic ad insertion technologies will allow the Company to provide media and entertainment companies a streamlined and scalable solution for the migration of media consumption from the PC to the wider variety of Internet-connected and mobile devices.

The following table presents the allocation of the purchase price for Kiptronic:

		(In thousands)
Consideration:		
Value of common stock issued	$	962
Fair value of total consideration transferred	$	962
Acquisition-related costs (included in general and administrative expenses)	$	135
Recognized amounts of identifiable assets acquired and liabilities assumed:		
Financial assets	$	87
Property and equipment		96
Identifiable intangible assets		463
Financial liabilities		(303)
Total identifiable net assets		343
Goodwill		619
	$	962

The following were the identified intangible assets acquired and the respective estimated periods over which such assets will be amortized:

		Amount (In thousands)	Weighted Average useful life (In years)
Existing technologies	$	440	4.0
Domain names		11	1.0
Customer relationships and contracts		12	0.7
Total	$	463	

In determining the purchase price allocation, the Company considered, among other factors, its intention to use the acquired assets and the historical and estimated future demand for Kiptronic services. The fair value of intangible assets was based upon the market approach and the cost approach. In applying the market approach, the values of the intangible assets acquired were determined based upon the economic principal of competition. Although there is no established public market for intangible assets, the market approach can be utilized through the analysis of market-derived empirical transaction data. The market approach involves empirical market data involving comparable intangible assets and a comparison of the subject intangible assets to such comparable intangible assets. This method is sometimes referred to as the Net Avoided Royalty Method. In the Net Avoided Royalty Method, transactions involving the licensing of comparable intangible assets are analyzed and the value of an asset is estimated by capitalizing the royalty expense saved because the company owns the asset.

The relief-from-royalty method was used to value the existing technologies acquired from Kiptronic. The relief-from-royalty method estimates the cost savings that accrue to the owner of an intangible asset that would otherwise be required to pay royalties or license fees on revenues earned through the use of the asset. The royalty rate used is based on an analysis of empirical, market-derived royalty rates for guideline intangible assets. Typically, revenue is projected over the expected remaining useful life of the completed technology. The market-derived royalty rate is then applied to estimate the royalty savings. The key assumptions used in valuing the existing technologies are as follows: royalty rate of 10%, discount rate of 22%, tax rate of 39% and estimated average economic life of four years.

In determining the value of domain names, an analysis of the market for domain names was performed. This analysis shows that prices range from $499 to $3,300, with a median of $1,588. Management determined that the acquired domain names have an estimated value of $1,500 each. Appling a tax rate of 39% and adding the present value of the tax savings to the estimated value of the domain names the Company arrived at the aggregate fair value of the domain names.

The customer relationships and customer contracts were valued using the cost approach. In utilizing the cost approach, the Company estimates the costs that are associated with establishing the customer relationship and contact. These estimates are used to value the customer relationship and contract net of the Company s effective tax rate of 39% and the present value of the tax savings

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amortization. The key assumptions used in valuing the customer relationships and contracts were as follows: estimated salaries of functional personnel, man-hours per relationship, estimated attrition rate of 10% (customer relationships only), tax rate of 39% and estimated remaining economic life of 7 months.

The total weighted average amortization period for the intangible assets acquired from Kiptronic is 3.8 years. The intangible assets are being amortized based upon the pattern in which the economic benefits of the intangible assets are being utilized, which in general reflects the cash flows generated from such assets. The goodwill resulting from the Kiptronic acquisition is deductible for income tax purposes and will be amortized over 15 years.

4. Prepaid Expenses and Other Current Assets

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

	As of September 30, 2009	As of December 31, 2008
Prepaid bandwidth and backbone services	$ 3,301	$ 2,538
Non-income taxes receivable (VAT)	3,755	3,030
Interest receivable	291	388
Employee advances and prepaid recoverable commissions	195	149
Other	1,664	1,729
Total prepaid expenses and other current assets	$ 9,206	$ 7,834

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 backbone capacity. The agreements required the Company to make advanced payments for future services to be received.

5. Property and Equipment

Property and equipment include (in thousands):

	As of September 30, 2009	As of December 31, 2008
Network equipment	$ 113,958	$ 96,698
Computer equipment	5,141	3,273
Furniture and fixtures	683	676
Leasehold improvements	2,754	2,221
Other equipment	533	446
	123,069	103,314
Less: accumulated depreciation	(83,416)	(63,129)
	$ 39,653	$ 40,185

6. Other Assets

Other assets include (in thousands):

	As of September 30, 2009	As of December 31, 2008
Prepaid bandwidth and backbone services	$ 8,353	$
Vendor deposits and other	695	628
Total other assets	$ 9,048	$ 628

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

7. Other Current Liabilities

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

	As of September 30, 2009	As of December 31, 2008
Accrued legal fees	$ 1,551	$ 3,662
Accrued compensation and benefits	2,312	3,594
Accrued cost of revenue	1,764	3,491
Non income taxes payable	1,044	1,492
Other accrued expenses	2,234	2,689
Total other current liabilities	$ 8,905	$ 14,928

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, pursuant to the application of ASC Topic 450 (formerly FAS 5).

8. 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 U.S. 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, U.S. Patent No. 6,553,413 (the 413 patent) and U.S. 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, U.S. 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. For the three and six month periods ended June 30, 2008, the Company recorded a potential additional provision for litigation of $6.2 million and $13.2 million, respectively, plus additional interest of $0.5 million and $0.7 million, respectively.

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 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.

Legal and other expenses associated with this case have been significant. The Company includes these litigation expenses in general and administrative expenses, as reported in its consolidated statement of operations. The Company expects that the litigation will continue to be expensive, time consuming and a distraction to its management in operating its business.

In December 2007, Level 3 Communications, LLC, or Level 3, filed a lawsuit against the Company in the U.S. District Court for the Eastern District of Virginia alleging that the Company was infringing certain patents Level 3 acquired from Savvis Communications Corp. In addition to monetary relief, including treble damages, interest, fees and costs, the complaint sought an order permanently enjoining the Company from conducting its business in a manner that infringed the relevant patents. A jury trial was conducted in the U.S. District Court for the Eastern District of Virginia in January 2009, and on January 23, 2009 the jury returned a verdict favorable to the Company finding that the Company did not infringe the Level 3 patents. The Company believes the jury verdict finding that the Company did not infringe the Level 3 patents is correct, and that the claims of infringement asserted against the Company by Level 3 in the litigation were without merit. The Court denied Level 3 s subsequent motion for JMOL or alternatively for a new trial, and entered judgment in favor of the Company. Level 3 filed its notice of appeal of the Court s decision

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on July 21, 2009 and its appeal brief on October 5, 2009 with the United States court of Appeals for the Federal Circuit. 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 jury verdict, does it believe that a loss is probable. Therefore, there is no provision for this lawsuit in the Company s financial statements.

In August 2007, the Company, certain of its officers and current and former directors, and the firms that served as the lead underwriters in the Company s initial public offering were named as defendants in several purported class action lawsuits filed in the U.S. District Courts for the District of Arizona and the Southern District of New York. All of the New York cases were transferred to Arizona and consolidated into a single action. The plaintiffs consolidated complaint asserted causes of action under Sections 11, 12, and 15 of the Securities Act of 1933, as amended, on behalf of a purported class of individuals who purchased the Company s common stock in its initial public offering and/or pursuant to its Prospectus. The complaint alleges, among other things, that the Company omitted and/or misstated certain facts concerning the seasonality of its business and the loss of revenue related to certain customers. On March 17, 2008, the Company and the individual defendants moved to dismiss all of the plaintiffs claims and a hearing was held on June 16, 2008. On August 8, 2008, the court granted the motion to dismiss, dismissing plaintiffs claims under Section 12 with prejudice and granting leave to amend the claims under Sections 11 and 15. Plaintiffs chose not to amend the claims under Sections 11 and 15, and on August 29, 2008 the court entered judgment in favor of the Company. On September 5, 2008, Plaintiffs filed a notice of appeal, and appellate briefs were filed by the parties in January and February 2009. The Company believes that it and the individual defendants have meritorious defenses to the plaintiffs claims and intends to contest the lawsuits vigorously. The Company is not able at this time to estimate the range of potential loss nor does it believe that a loss is probable. Therefore, there is no provision for these lawsuits in the Company s financial statements.

9. Net Income (Loss) Per Share

On January 1, 2009, the Company adopted ASC Topic 260 (ASC 260), (formerly FSP No. EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions are Participating Securities* . ASC 260 addresses whether instruments granted in share-based payment awards are participating securities prior to vesting and therefore, must be included in the earnings allocation in calculating earnings per share under the two-class method described in ASC 260. The Company s restricted stock qualifies as a participating security as defined by ASC 260 as the holders have the non-forfeitable right to receive dividends declared or paid with respect to such restricted stock. The Company has applied ASC 260 to the earnings per share calculations for all periods presented. The Company has included in the computation of outstanding shares approximately 195,000 and 809,000, respectively of non-vested restricted stock for the three months ended September 30, 2009 and 2008, respectively and approximately 297,000 and 934,000, respectively of non-vested restricted stock for the nine months ended September 30, 2009 and 2008, respectively. The impact of adoption changed previously reported net loss per share for the three and nine month periods ended September 30, 2008 from ($0.19) to ($0.18) per share and ($0.60) to ($0.59), per share, respectively.

The Company calculates basic and diluted earnings per share based on income available to common stockholders, which approximates net income for each period, and includes the restricted stock as participating securities. The Company uses the weighted-average number of common shares outstanding during the period, plus the restricted stock discussed above, for the computation of basic earnings per share using the two-class method. Diluted earnings per share include the dilutive effect of convertible stock options and restricted stock units in the weighted-average number of common shares outstanding. The following table sets forth the components used in the computation of basic and diluted net income (loss) per share for the periods indicated (in thousands, except per share data):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Net (loss) income available to common stockholders	$ (5,220)	$ (15,352)	$ 44,617	$ (49,126)
Basic weighted average common shares	84,489	83,022	84,012	82,845
Basic weighted average common shares	84,489	83,022	84,012	82,845
Dilutive effect of stock options and restricted stock units			3,696	
Diluted weighted average common shares	84,489	83,022	87,708	82,845
Basic net (loss) income per share	$ (0.06)	$ (0.18)	$ 0.53	$ (0.59)

Diluted net (loss) income per share	$	(0.06)	$	(0.18)	$	0.51	$	(0.59)

For the three month period ended September 30, 2009 and the three and nine month periods ended September 30, 2008, an aggregate of 4,048,000, 2,105,000 and 2,198,000, respectively, outstanding options and common stock subject to repurchase were excluded from the computation of diluted net loss per common share for the three month period ended September 30, 2009 and the three and nine month periods ended September 30, 2008 because including them would have had an antidilutive effect.

10. Comprehensive (Loss) Income

The following table presents the calculation of comprehensive income (loss) and its components (in thousands):

	For the Three Months Ended September 30, 2009	For the Three Months Ended September 30, 2008	For the Nine Months Ended September 30, 2009	For the Nine Months Ended September 30, 2008
Net (loss) income	$ (5,220)	$ (15,352)	$ 44,617	$ (49,126)
Other comprehensive (loss) income, net of tax:				
Unrealized gain (loss) on investments	16	(127)	118	(271)
Foreign exchange translation	(1)	(253)	(275)	(138)
Other comprehensive income (loss)	15	(380)	(157)	(409)
Comprehensive (loss) income	$ (5,205)	$ (15,732)	$ 44,460	$ (49,535)

For the periods presented, accumulated other comprehensive income consisted of (in thousands):

	As of September 30, 2009	As of December 31, 2008
Net unrealized gain (loss) on investments, net of tax	$ 105	$ (15)
Foreign currency translation		275
Total accumulated other comprehensive income	$ 105	$ 260

11. Stockholders Equity

Initial Public Offering (IPO)

On June 8, 2007, the Company completed an initial public offering of its common stock in which the Company sold and issued 14,900,000 shares of its common stock and selling stockholders sold 3,500,000 shares of the Company s common stock, in each case at a price to the public of $15.00 per share. The common shares began trading on the NASDAQ Global Market on June 8, 2007. The Company raised a total of $223.5 million in gross proceeds from the IPO, or approximately $203.9 million in net proceeds after deducting underwriting discounts and commissions of approximately $15.6 million and other offering costs of approximately $4.0 million.

Business Acquisition

On May 20, 2009 the Company entered into an Asset Purchase Agreement to acquire substantially all of the assets of Kiptronic Inc. for approximately $1.0 million. The aggregate purchase price of approximately $1.0 million consisted of 213,334 shares of the Company s common stock.

12. Share-Based Compensation

The following table summarizes the components of share-based compensation expense included in the Company s condensed consolidated statement of operations for the three and nine month periods ended September 30, 2009 and 2008 in accordance with ASC Topic 718 (ASC 718) (formerly SFAS No. 123R) (in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Share-based compensation expense by type of award:				
Stock options	$ 2,255	$ 2,027	$ 6,324	$ 8,290
Restricted stock awards and units	2,114	2,278	6,813	4,259
Total share-based compensation expense	$ 4,369	$ 4,305	$ 13,137	$ 12,549
Effect of share-based compensation expense on operations by line:				
Cost of services	$ 638	$ 594	$ 1,772	$ 1,658
General and administrative expense	1,805	1,669	5,755	5,031
Sales and marketing expense	1,293	1,400	3,734	4,137
Research and development expense	633	642	1,876	1,723
Total cost related to share-based compensation expense	$ 4,369	$ 4,305	$ 13,137	$ 12,549

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Unrecognized share-based compensation expense totaled $30.6 million at September 30, 2009. The Company expects to amortize $4.4 million during the remainder of 2009, $14.4 million in 2010 and the remainder thereafter based upon the scheduled vesting of the stock options, restricted stock awards and units outstanding at that time.

Effective May 15, 2008 the Company initiated a Stock Option/Restricted Stock Unit Exchange Offer (the Offer). Pursuant to the Offer, employees (other than executive officers) had the opportunity to exchange certain stock options issued by the Company after April 1, 2007 for restricted stock units (RSUs). The exchange ratio was one RSU in exchange for two stock options. The RSUs vest one-sixth on December 1, 2008 and one-sixth each six months thereafter such that all RSUs issued pursuant to the Offer will be vested no later than June 1, 2011. The Offer was carried out in accordance with tender offer documents filed with the SEC on May 15, 2008. The Offer expired June 16, 2008. In aggregate, 2,002,100 eligible stock options were tendered by eligible employees and 1,001,051 RSUs were issued in exchange pursuant to the Offer. In addition, the Company entered into agreements with executive officers whereby 875,000 stock options were exchanged for 437,500 RSUs. The Company determined this was a Type I (probable-to-probable) modification under ASC 718 for substantially all of the tendered options. Accordingly, the Company measured the incremental fair value of the RSUs issued over that of the options tendered and recorded $29,000 of additional unrecognized share-based compensation related to the Offer. This additional unrecognized share-based compensation, as well as unrecognized share-based compensation related to the options tendered in the Offer, will be recognized over the vesting period of the RSUs using the straight-line method over the vesting period.

The Offer also included the exchange of performance-based stock options for one employee. At the time of the Offer, the Company determined the original award was not probable of being earned, and had not recorded any share-based compensation expense. As such, the exchange of this performance-based option for RSUs is considered to be a Type III (improbable to probable) modification under ASC 718 (formerly FAS 123R). The Company measured the fair value of the RSUs issued in the Offer, and will recognize the expense using the straight-line method over the vesting period.

On May 13, 2008 the Company granted 537,500 RSUs to certain executive officers, The vesting of these RSUs began on December 1, 2008 and will continue vesting in increments of 1/6th every six months, such that all RSUs granted will vest no later than June 1, 2011, subject to the individual continuing to be an employee of the Company through each relevant vesting date. On October 20, 2008, the Company issued one of its officers 350,000 RSUs. The vesting of these RSUs began on the one month anniversary of October 20, 2008 and an additional 1/48th on the 20th day of each calendar month thereafter, provided he continues to be a service provider to the Company through each date. On November 25, 2008, the Company issued one of its officers 100,000 RSUs. The vesting of the 100,000 RSUs, vest fifty percent (50%) 90 days after November 25, 2008, and fifty percent (50%) on the second anniversary of November 25, 2008. On December 29, 2008, the Company issued to one of its officers 150,000 RSUs. One sixteenth (1/16th) of the RSUs vested on March 1, 2009, and 1/16th of the RSUs vest on each of June 1, September 1, December 1, and March 1 thereafter through and including December 1, 2012.

In November 2008, the Company entered into an Equity Award Amendment with the Company s Chief Executive Officer (CEO). In connection with this award, 750,000 options to purchase common stock were cancelled and another 750,000 options were modified. In exchange, the CEO received 500,000 RSUs of which 100,000 are service awards vesting over two years and the remaining 400,000 are performance awards. Accordingly, the Company measured the incremental fair value of the RSUs issued over the fair value of the options cancelled and modified and calculated there to be $317,500 of additional unrecognized share-based compensation which will be recognized over the vesting period of the modified options and RSUs granted.

The performance based RSUs will only vest if the Company exceeds specified revenue and cash gross margin targets during the quarters ending on or before March 31, 2010. The RSUs are separated into four tranches of 100,000 Performance RSU s each. The maximum number of performance-based RSUs that may vest is based on the achievement of specific quarterly financial targets. Any Performance RSUs that have not vested based on the achievement of the quarterly financial targets with respect to quarters on or before March 31, 2010, will expire and be cancelled immediately following the determination of the Company s financial performance for the last quarter ending on or before March 31, 2010.

In May 2009, the Company granted 282,168 performance based RSUs to various employees. The performance based RSU s will only vest if a specific revenue target is achieved in any one quarter during the ten full quarters following the date of the grant and provided the employee remains with the Company through the vesting date. As of September 30, 2009, the performance requirement was not probable of being achieved and accordingly no compensation expense has been recognized.

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On June 1, 2009 the Company granted 230,000 RSUs to certain executive officers. Each of the RSU awards, if eligible, shall vest in three (3) equal annual installments beginning on the third business day following the Company s public announcement of its earnings for the fiscal quarter ending June 30, 2010, and the second and third installments vesting on June 1, 2011 and June 1, 2012, provided the executive officer remains with the Company through each such vesting date. All or a portion of the RSUs may become eligible for vesting based upon the achievement of certain financial performance targets for the twelve-month period ending June 30, 2010. RSUs that do not become eligible are forfeited. As of September 30, 2009, no compensation expense had been recognized for these RSUs.

On June 1, 2009 the Company granted 320,000 stock options to certain executive officers. Each of the stock option awards vest one quarter (1/4th) on June 1, 2010, and one forty-eighth (1/48th) each month thereafter on the first day of each month, provided the executive officer remains with the Company through each such vesting date.

13. Goodwill and Other Intangible Assets

The Company recorded goodwill and other intangible assets as a result its business acquisition of substantially all of the assets of Kiptronic that occurred on May 20, 2009. During the three months ended September 30, 2009, the Company made purchase accounting adjustments reducing goodwill by $0.5 million to reflect the final determination of the fair value of assumed liabilities and assets in connection with the acquisition of Kiptronic.

The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed has been recorded as goodwill. As of September 30, 2009, the Company has recorded goodwill of approximately $0.6 million.

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 September 30, 2009.

Other intangible assets that are subject to amortization consist of the following (in thousands):

	September 30, 2009		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Existing technologies	$ 440	$ (46)	$ 394
Domain names	11	(4)	7
Customer relationships and contracts	12	(9)	3
Total	$ 463	$ (59)	$ 404

Aggregate expense related to amortization of other intangible assets for the three and nine month periods ended September 30, 2009 and 2008 was $0.1 million and $-0-, respectively. Based on the Company s other intangible assets as of September 30, 2009, aggregate expense related to amortization of other intangible assets is expected to be approximately $33,550 for the remainder of 2009, and $113,500, $110,000, $110,000 and $36,600 for fiscal years 2010, 2011, 2012 and 2013, respectively.

14. Related Party Transactions

The Company leases office space from a company owned by one of the Company s executives. Rent expense for the lease, including reimbursement for telecommunication lines, was approximately $3,000 and $9,000, respectively, for each of the three and nine month periods ended September 30, 2009 and 2008.

The Company sells services to entities owned, in whole or in part, by certain of the Company s executives. For the three and nine month periods ended September 30, 2009, the Company did not generate any revenue from related parties. Revenue derived from related parties was less than 1% for the three and nine month periods ended September 30, 2008.

15. Concentrations

For the three and nine month periods ended September 30, 2009 and 2008, the Company had one major customer for which revenue exceeded 10% of total revenue. Revenues for the three month periods ended September 30, 2009 and 2008, for this customer totaled approximately $4.8 million and $7.0 million, respectively. Revenues for the nine month periods ended September 30, 2009 and 2008, for this customer totaled approximately $15.1 million and $16.8 million, respectively.

Revenue from non-U.S. sources totaled approximately $7.3 million and $5.5 million respectively, for the three month periods ended September 30, 2009 and 2008, respectively. Revenue from non-U.S. sources totaled approximately $20.0 million and $14.6 million respectively, for the nine month periods ended September 30, 2009 and 2008, respectively.

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16. Income taxes

The Company accounts for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial statements and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date. Based upon the Company s estimated annual effective tax rate and after consideration of discrete tax items in the quarter, the Company s estimated tax expense for the three and nine month periods ended September 30, 2009 was approximately $61,000 and $552,000, respectively. For the nine month period ended September 30, 2008 the Company had a tax benefit of approximately $78,000.

The Company records net deferred tax assets to the extent it believes these assets will more likely than not be realized. In making such determination, the Company considers all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent financial operations. In the event the Company were to determine that it would be able to realize the deferred income tax assets in the future in excess of its net recorded amount, the Company would make an adjustment to the valuation allowance which would reduce the provision for income taxes.

As of September 30, 2009, the Company has approximately $1,209,000 of total unrecognized tax benefits which did not materially change during the third quarter of 2009. This total of unrecognized tax benefits, if recognized, would favorably affect the effective income tax rate. The Company anticipates its unrecognized tax benefits will decrease within twelve months of the reporting date, as a result of settling potential tax liabilities in certain foreign jurisdictions.

The Company recognizes interest and penalties related to unrecognized tax benefits in its tax provision. As of September 30, 2009, the Company has recorded a liability of $213,000 for the payment of interest and penalties, which did not materially change during the third quarter of 2009.

During the nine months ended September 30, 2009, the Company performed its assessment of the recoverability of deferred tax assets and determined there was sufficient negative evidence as a result of the Company s cumulative losses to conclude that it was more likely than not that the Company s deferred tax assets would not be realized and accordingly maintained a full valuation allowance. In calculating its effective income tax rate for 2009, no benefit is provided for temporary differences that increase deferred tax assets.

The Company conducts business in various jurisdictions in the United States and in foreign countries and is subject to examination by tax authorities. As of September 30, 2009 and December 31, 2008, the Company s 2006 and 2007 Federal income tax returns are under examination. The tax years 2003 through 2008 remain open to examination by U.S. and certain state and foreign taxing jurisdictions.

17. Segment Reporting

The Company operates in one industry segment content delivery network services. The Company operates in three geographic areas the United States, Europe and Asia Pacific.

ASC Topic 280 (formerly SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*), establishes standards for reporting information about operating segments. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance. The Company s chief operating decision maker is its Chief Executive Officer. The Company s Chief Executive Officer reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. The Company has one business activity and there are no segment managers who are held accountable for operations, operating results and plans for products or components below the consolidated unit level. Accordingly, the Company reports as a single operating segment.

Revenue by geography is based on the location of the customer from which the revenue is earned. The following table sets forth revenue and long-lived assets by geographic area (in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008

Domestic revenue	$ 25,221	$ 27,661	$ 78,019	$ 79,041
International revenue	7,309	5,455	20,019	14,591
Total revenue	$ 32,530	$ 33,116	$ 98,038	$ 93,632

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The following table sets forth long-lived assets by geographic area (in thousands):

	As of September 30, 2009	As of December 31, 2008
Domestic long-lived assets	$ 25,242	$ 28,701
International long-lived assets	14,411	11,484
Total long-lived assets	$ 39,653	$ 40,185

18. Fair Value Measurements

The Company follows guidance in ASC 825-10-65 (formerly SFAS 107-1 and APB 28-1), and ASC 820 (formerly SFAS No. 157). ASC 820 defines fair value, establishes a framework for measuring fair value in accordance with accounting principles generally accepted in the United States, and expands disclosures about fair value measurements. ASC 825 requires companies to provide additional fair value information for certain financial instruments in interim financial statements.

ASC 820 establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

As of September 30, 2009, the Company held certain assets that are required to be measured at fair value on a recurring basis. These include commercial paper, corporate notes and bonds, and US Government Agency Bonds which are classified as marketable securities on the Company s consolidated balance sheet. All of these investments are publicly traded and for which market prices are readily available.

The Company s assets measured at fair value on a recurring basis subject to the disclosure requirements of ASC 820 at September 30, 2009, were as follows (in thousands):

		Fair Value Measurements at Reporting Date Using		
Description	Total	Quoted Prices In Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Government agency bonds	$ 36,670	$ 36,670	$	$
Commercial paper	5,993		5,993	
Corporate notes and bonds	7,704	7,704		
Publicly traded common stock	16	16		
Total assets measured at fair value	$ 50,383	$ 44,390	$ 5,993	$

For the period ended September 30, 2009, realized gains and losses for marketable securities are reported in interest income, unrealized gains and losses for marketable securities are included in other comprehensive income and expense. For the period ended September 30, 2009, the Company had unrealized gains of approximately $107,000.

19. Subsequent Event

The Company has evaluated events and transactions occurring subsequent to September 30, 2009 through November 6, 2009, the date of the issuance of the financial statements, in accordance with ASC 855 (formerly SFAS No. 165). During this period, there were no recognized subsequent events requiring recognition in the financial statements and no non-recognized subsequent events requiring disclosure.

Item 2. Management s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the condensed consolidated financial statements and the related notes thereto included elsewhere in this quarterly report on Form 10-Q and the audited consolidated financial statements and notes thereto and management s discussion and analysis of financial condition and results of operations for the year ended December 31, 2008 included in our annual report on Form 10-K filed with the Securities and Exchange Commission, or SEC, on March 13, 2009. This quarterly report on Form 10-Q contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include statements as to industry trends and future expectations of ours and other matters that do not relate strictly to historical facts.

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These statements are often identified by the use of words such as may, will, expect, believe, anticipate, intend, could, estimate, or continue, and similar expressions or variations. These statements are based on the beliefs and assumptions of our management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled Risk Factors set forth in Part II, Item 1A of this quarterly report on Form 10-Q and in our other SEC filings. We undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

Overview

We were founded in 2001 as a provider of content delivery network, or CDN, services to deliver digital content over the Internet. We began development of our infrastructure in 2001 and began generating meaningful revenue in 2002. As of September 30, 2009, we had approximately 1,370 active customers worldwide. We primarily derive income from the sale of services to customers executing contracts with terms of one year or longer, which we refer to as recurring revenue contracts or long-term contracts. These contracts generally commit the customer to a minimum monthly level of usage with additional charges applicable for actual usage above the monthly minimum. We have entered into an increasing number of customer contracts that have minimum usage commitments that are based on twelve-month or longer periods and in some cases, other arrangements. We believe that having a consistent and predictable base level of revenue is important to our financial success. Accordingly, to be successful, we must maintain our base of recurring revenue contracts by eliminating or reducing any customer cancellations or terminations and build on that base by adding new customers and increasing the number of services, features and functionalities our existing customers purchase.

On May 20, 2009 we entered into an Asset Purchase Agreement to acquire substantially all of the assets of Kiptronic. Kiptronic develops mobility and monetization solutions for content publishers. The combination of our distributed computing and delivery platform with Kiptronic device-targeting and dynamic ad insertion technologies will allow us to provide media and entertainment companies a streamlined and scalable solution for the migration of media consumption from the PC to a wider variety of Internet-connected and mobile devices.

We primarily derive revenue from the sale of CDN and related services to our customers. These services include delivery of digital media, including video, music, games, software and social media as well as associated services such as storage, data center, transit and consulting services. We primarily generate revenue by charging customers on a per-gigabyte basis or on a variable basis based on peak delivery rate for a fixed period of time, as our services are used. During 2007, we entered into a multi-element arrangement which generates revenue by providing consulting services related to the development of a Custom CDN solution, through the cross-license of certain technologies, including certain components of our CDN software and technology, and post-contract customer support (PCS) for both the custom CDN-solution and the software component. We also derive some business from the sale of custom CDN services. These are generally limited to modifying our network to accommodate non-standard content player software or to establish dedicated customer network components that reside both within our network or that operate within our customers network.

Traffic on our network has continued to grow. This traffic growth is primarily the result of growth in the traffic delivered on behalf of existing customers, and to a lesser extent traffic delivered on behalf of new customers. Our revenue is generated primarily by charging for traffic delivered. During the quarter ended September 30, 2009, we continued to add new customers, but also eliminated many customers as we continued to focus on customer quality. We have seen an increase in the length of our sales cycle, but we continue to see that new and existing customers want the benefits of the specialized services that we bring to the market. We are also experiencing continued pricing pressure, particularly with our larger customers.

Historically, we have derived a portion of our revenue from outside of the United States. Our international revenue has grown recently, and we expect this trend to continue as we focus on our strategy of expanding our network and customer base internationally. For the year ended December 31, 2008 revenue derived from customers outside the United States accounted for approximately 16% of our total revenue. For the year ended December 31, 2008 we derived approximately 75% of our international revenue from operations in Europe and approximately 25% of our international revenue from Asia Pacific, respectively. For the three month periods ended September 30, 2009 and 2008, respectively, revenue derived from customers outside the United States accounted for approximately 22% and 16% respectively, of our total revenue. For the nine month periods ended September 30, 2009 and 2008, respectively, revenue derived from customers outside the United States accounted for approximately 20% and 16% respectively, of our total revenue. For the three and nine month periods ended September 30, 2009, we derived approximately 67% and 71%, respectively, of our international revenue from Europe and approximately 33% and 29%, respectively, of our international revenue from Asia Pacific, respectively. We expect foreign revenue as a percentage of our total revenues to increase in 2009 compared to 2008. Our international business is managed as a single geographic segment, and we report our financial results on this basis.

During any given fiscal period, a relatively small number of customers typically account for a significant percentage of our revenue. For example, in 2008, sales to our top 10 customers, in terms of revenue, accounted for approximately 38% of our total revenue. During 2008, one of these top 10 customers, Microsoft, represented approximately 15% of our total revenue for that period.

For the three and nine month periods ended September 30, 2009, sales to our top 10 customers, in terms of revenue, accounted for approximately 40% and 37%, respectively of our total revenue. During the three and nine month periods ended September 30, 2009 we had one customer, Microsoft that accounted for approximately 15% and 16%, respectively of our revenue during those periods. During 2007, we entered into a multi-element arrangement with Microsoft which generates revenue by providing consulting services related to the development of a Custom CDN solution, amortization of prepaid license and amortization of prepaid post-contract customer support (PCS) for both the custom CDN-solution and the software component. Revenue from this multi-element arrangement is being recognized over the term of the software agreement which at September 30, 2009, had 17-months remaining. Our relationship with Microsoft includes a minimum annual traffic commitment that may vary in duration based upon traffic utilization rates. We anticipate customer concentration levels will remain constant compared to prior years. In addition to selling to our direct customers, we maintain relationships with a number of resellers that purchase our services and charge a mark-up to their end customers. Revenue generated from sales to reseller customers accounted for approximately 1% for the year ended December 31, 2008. For the three and nine month periods ended September 30, 2009, revenue generated from sales to reseller customers was less than 3% and 2%, respectively of our total revenue.

In addition to these revenue-related business trends, our cost of revenue decreased in absolute dollars and as a percentage of revenue for the three month period ended September 30, 2009 compared to the three month period ended September 30, 2008 and increased in absolute dollars and decreased as a percentage of revenue during the nine month period ended September 30, 2009 compared to the nine month period ended September 30, 2008. This increase in absolute dollars is primarily the result of increased network operations personnel related to the increased investments to build out the capacity and operate our network.

Through 2008 operating expense has increased in absolute dollars each period as revenue has increased. In 2008, these increases were primarily due to increased litigation costs and legal fees associated with ongoing intellectual property litigation. For the three month period ended September 30, 2009, operating expenses, excluding the provision for litigation, decreased compared to the three month period ended September 30, 2008. This decrease was primarily due to decreased general and administrative costs (primarily litigation costs and lower bad debt expense) and decreased sales and marketing costs (primarily due to a reduction in marketing programs) off-set by increased non-network related depreciation. Research and Development expenses remained constant for the three month period ended September 30, 2009 compared to the three month period ended September 30, 2008. For the nine month period ended September 30, 2009, operating expenses, excluding the provision for litigation, decreased compared to the nine month period ended September 30, 2008. This decrease was primarily due to decreased general and administrative costs (primarily litigation costs, bad debt expense and legal fees) and decreased sales and marketing (primarily due to a reduction in marketing programs) off-set by increased research and development costs and non-network related depreciation.

We make our capital investment decisions based upon careful evaluation of a number of variables, such as the amount of traffic we anticipate on our network, the cost of the physical infrastructure required to deliver that traffic, and the forecasted capacity utilization of our network. Our capital expenditures have varied over time, in particular as we purchased servers and other network equipment associated with our network build-out. For example, in 2006, 2007 and 2008, we made capital purchases of $40.4 million, $26.5 million and $20.1 million, respectively. For the three and nine month periods ended September 30, 2009, we made capital investments of $11.1 million and $19.8 million, respectively. We continue to see improvements in the efficiency of our network allowing us to meet traffic growth with less investment, however, we expect to have ongoing capital expenditure requirements, as we continue to invest in and expand our CDN. For 2009, we currently anticipate making aggregate capital expenditures of approximately 18% to 19% of total revenue for the year.

During 2008 we generated revenue from certain customers that are entities related to certain of our founders. The aggregate amounts of revenue derived from these related party transactions was less than 1% for the year ended December 31, 2008. For the three and nine month periods ended September 30, 2009, we did not generate any revenue from related parties.

We are currently engaged in litigation with one of our principal competitors, Akamai Technologies, Inc., or Akamai, and its licensor, the Massachusetts Institute of Technology, or MIT, in which these parties have alleged that we are infringing three of their patents. In February 2008, a jury returned a verdict in this lawsuit, finding that we infringed four claims of the patent at issue (U.S. Patent No. 6,108,703 (the 703 patent) and rejecting our invalidity defenses. The Court conducted a bench trial in November 2008, regarding our equitable defenses; and we filed a motion for reconsideration of the Court s earlier denial of our motion for Judgment as a Matter of Law (JMOL). Our 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 our initial motion for JMOL. On April 24, 2009 the Court issued its order and memorandum setting aside the adverse jury verdict and ruling that we did not infringe Akamai s 703 patent and that we are entitled to judgment as a matter of law. Based upon the Court s April 24, 2009 order we reversed the $65.6 million provision for litigation previously recorded for this lawsuit as we no longer believe that payment of any amounts represented by the litigation provision is probable. The Court entered final judgment in favor of us on May 22, 2009, and Akamai filed a notice of appeal on May 26, 2009 and filed its appeal brief on September 15, 2009 with the United States Court of Appeals for the Federal Circuit. We cannot assure you that this lawsuit ultimately will be resolved in our favor. Our legal and other expenses associated with this case have been significant. We include these litigation expenses in general and administrative expenses, as reported in our condensed consolidated statement of operations. We expect that these expenses will continue to be significant.

In December 2007, Level 3 Communications, LLC, or Level 3, filed a lawsuit against us in the U.S. District Court for the Eastern District of Virginia alleging that we were infringing certain patents Level 3 acquired from Savvis Communications Corp. In addition to monetary relief, including treble damages, interest, fees and costs, the complaint sought an order permanently enjoining us from conducting our business in a manner that infringed the relevant patents. A jury trial was conducted in the U.S. District Court for the Eastern District of Virginia in January 2009, and on January 23, 2009 the jury returned a verdict favorable to us finding that we did not infringe the Level 3 patents. We believe the jury verdict finding that we did not infringe the Level 3 patents is correct, and that the claims of infringement asserted against us by Level 3 in the litigation were without merit. The Court denied Level 3 s subsequent motion for JMOL or alternatively for a new trial, and entered a judgment in our favor. Level 3 filed a notice of appeal on July 21, 2009 and filed its appeal brief on October 5, 2009. We intend to vigorously defend the action. Our legal and other expenses associated with this case have been significant. We include these litigation expenses in general and administrative expenses, as reported in our condensed consolidated statement of operations. We expect that these expenses will continue to be significant.

In August 2007, we, certain of our officers and current and former directors, and the firms that served as the lead underwriters in our initial public offering were named as defendants in several purported class action lawsuits filed in the U.S. District Courts for the District of Arizona and the Southern District of New York. All of the New York cases were transferred to Arizona and consolidated into a single action. The plaintiffs consolidated complaint asserted causes of action under Sections 11, 12, and 15 of the Securities Act of 1933, as amended, on behalf of a purported class of individuals who purchased our common stock in our initial public offering and/or pursuant to our Prospectus. The complaint alleged, among other things, that we omitted and/or misstated certain facts concerning the seasonality of our business and the loss of revenue related to certain customers. On March 17, 2008, we and the individual defendants moved to dismiss all of the plaintiffs claims, a hearing was held on this motion on June 16, 2008. On August 8, 2008, the court granted the motion to dismiss, dismissing plaintiffs claims under Section 12 with prejudice and granting leave to amend the claims under Sections 11 and 15. Plaintiffs chose not to amend the claims under Sections 11 and 15, and on August 29, 2008, the court entered judgment in favor of us. On September 5, 2008 Plaintiffs filed a notice of appeal, and appellate briefs were filed by the parties in January and February, 2009. We believe that we and the individual defendants have meritorious defenses to the plaintiffs claims and intend to contest the lawsuit vigorously. We are not able at this time to estimate the range of potential loss nor do we believe that a loss is probable. Therefore, there is no provision for this lawsuit in our financial statements.

We were profitable for the nine months ended September 30, 2009; the largest impact to our profitability was the reversal of our provision for litigation judgment accrual of $65.6 million regarding the patent infringement lawsuit filed by Akamai Technologies, Inc.

Our future results will be affected by many factors identified in the section captioned Risk Factors, in this quarterly report on Form 10-Q, including our ability to:

- increase our revenue by adding customers and limiting customer cancellations and terminations, as well as increasing the amount of monthly recurring revenue that we derive from our existing customers;

- manage the prices we charge for our services, as well as the costs associated with operating our network in light of increased competition;

- successfully manage our litigation with Akamai and Level 3 to a favorable conclusion;

- prevent disruptions to our services and network due to accidents or intentional attacks; and

- continued ability to deliver a significant portion of our traffic through settlement free peering relationships which significantly reduce our cost of delivery.

As a result, we cannot assure you that we will achieve our expected financial objectives, including positive net income.

Critical Accounting Policies and Estimates

Our management s discussion and analysis of our financial condition and results of operations are based upon our unaudited condensed consolidated financial statements included elsewhere in this quarterly report on Form 10-Q, which have been prepared by us in accordance with accounting principles generally accepted in the United States for interim periods. These principles require us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, cash flow and related disclosure of contingent assets and liabilities. Our estimates include those related to revenue recognition, accounts receivable reserves, income and other taxes, stock-based compensation, equipment and contingent obligations. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates. To the extent that there are material differences between these estimates and our actual results, our future financial statements will be affected.

During the three month period ended June 30, 2009, we changed the method in which we calculate the reserve for bad debt. Beginning with the quarter ended June 30, 2009, we began calculating the reserve for bad debt using the aging of the accounts receivable method. As of September 30, 2009, there were no other material changes to any of the critical accounting policies as

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described in our annual report on Form 10-K dated March 13, 2009. During the quarterly periods between the February 2008 adverse jury verdict in the patent infringement lawsuit filed by Akamai Technologies, Inc. and the Court s April 24, 2009 order, we had accrued for potential damages and interest. Based upon the Court s April 24, 2009 order we have reversed the $65.6 million provision for litigation previously recorded for this lawsuit as we no longer believe that payment of any amounts represented by the litigation provision is probable.

Results of Operations

Revenue

	Three months ended September 30,				Nine months ended September 30,			
	2009	2008	Increase (Decrease)	Percent Change	2009	2008	Increase (Decrease)	Percent Change
		(in thousands)				(in thousands)		
Revenue	$ 32,530	$ 33,116	$ (586)	(2)%	$ 98,038	$ 93,632	$ 4,406	5%

Revenue decreased 2%, or $0.6 million, to $32.5 million for the three months ended September 30, 2009 as compared to $33.1 million for the three months ended September 30, 2008. For the nine months ended September 30, 2009, total revenues increased 5%, or $4.4 million, to $98.0 million as compared to $93.6 million for the nine months ended September 30, 2008. The decrease in revenue for the three month period ended September 30, 2009 as compared to the same period in the prior year was primarily attributable to a decrease in our average unit sales price. The increase in revenue for the nine month period ended September 30, 2009 as compared to the same period in the prior year was primarily attributable to an increase in our recurring CDN service revenue of approximately $3.1 million and an increase in professional services revenue of approximately $1.1 million. The increase in CDN service revenue was primarily attributable to an increase in traffic moving through our network (which was partially off-set by a decrease in average unit sales price) and to a lesser extent in the number of customers under recurring revenue contracts. As of September 30, 2009, we had approximately 1,370 customers under recurring CDN service revenue contracts as compared to approximately 1,300 as of September 30, 2008. During the year ended December 31, 2007, we deferred $3.4 million of custom CDN services revenue from one customer as the amounts were part of a multi-element arrangement. Entering into the multi-element arrangement with this customer changed the way we accounted for revenue earned from this customer during 2007. The revenue from the custom CDN services is being recognized ratably over a 44 month period starting in July 2007. As new service and or license fees are billed it is added to the deferred revenue and amortized over the then remaining contract term. As of September 30, 2009, we had $3.1 million of deferred custom CDN services revenue remaining of which approximately $0.5 million will be recognized during the remainder of 2009, $2.2 million in 2010 and the remainder thereafter.

For the three months ended September 30, 2009 and 2008, approximately 22% and 16%, respectively, of our total revenues were derived from our operations located outside of the United States. For the three months ended September 30, 2009 and 2008, we derived approximately 67% and 76%, respectively of our international revenue from Europe and approximately 33% and 24%, respectively of our international revenue from Asia Pacific. For the nine months ended September 30, 2009 and 2008, approximately 20% and 16%, respectively, of our total revenues were derived from our operations located outside of the United States. For the nine months ended September 30, 2009 and 2008, we derived approximately 71% and 76%, respectively of our international revenue from Europe and approximately 29% and 24%, respectively of our international revenue from Asia Pacific. No single country outside of the United States accounted for 10% or more of revenues during these periods.

Cost of Revenue

	Three months ended September 30,				Nine months ended September 30,			
	2009	2008	Increase (Decrease)	Percent Change	2009	2008	Increase (Decrease)	Percent Change
		(in thousands)				(in thousands)		
Cost of revenue	$ 20,907	$ 21,557	$ (650)	(3)%	$ 63,456	$ 61,980	$ 1,476	2%

Cost of revenue includes fees paid to network providers for bandwidth and backbone, and fees paid to data center operators for co-location of our network equipment. Cost of revenue also includes payroll and related costs, depreciation of network equipment used to deliver our CDN services and equity-related compensation for network operations personnel.

Cost of revenue decreased 3%, or $0.7 million, to $20.9 million for the three months ended September 30, 2009 as compared to $21.6 million for the three months ended September 30, 2008. This decrease was primarily due to a decrease in aggregate bandwidth and co-location fees of

$0.5 million and lower depreciation expense on network equipment of $0.6 million. These decreases were partially off-set by an increase in payroll and related employee costs of $0.5 million. The decrease in bandwidth and co-location fees is due to a reduction in the cost per megabyte of traffic moving through our network and to a lesser extent the recovery of value added

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taxes in our foreign locations. The decrease is depreciation is due to certain network assets being fully depreciated. The increase in payroll and related employee costs is due to increased staff to build and operate our CDN.

For the nine months ended September 30, 2009, cost of revenues increased 2%, or $1.5 million, to $63.4 million as compared to $62.0 million for the nine months ended September 30, 2008. This increase was primarily due to an increase in payroll and related employee costs of $2.0 million associated with increased staff. This increase was partially off-set by decreases in bandwidth and co-location fees of $0.4 million due to a reduction in the cost per megabyte of traffic moving through our network, lower depreciation expense of network equipment of $0.1 million due to certain network assets being fully depreciated and a decrease in royalty expenses of $0.2 million. During the three and nine month periods ended September 30, 2009, we recognized $21,000 and $63,000, respectively, of deferred costs associated with revenue related to the multi-element arrangement entered into during the second quarter of 2007. As of September 30, 2009, there was $0.1 million of deferred costs remaining to be amortized ratably into cost of services over a 44 month period that commenced in July 2007.

Additionally, cost of revenue includes share-based compensation of approximately $0.6 million and $1.8 million, respectively, for both the three and nine months ended September 30, 2009 and 2008, resulting from our application of ASC 718 (formerly FAS 123R).

Cost of revenue was composed of the following (in millions):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Bandwidth and co-location fees	$ 11.0	$ 11.5	$ 33.5	$ 33.9
Depreciation network	6.0	6.6	18.7	18.8
Payroll and related employee costs	2.7	2.2	7.6	5.6
Share-based compensation	0.6	0.6	1.8	1.7
Royalty expenses	0.2	0.1	0.5	0.7
Other costs	0.4	0.6	1.3	1.3
Total cost of revenues	$ 20.9	$ 21.6	$ 63.4	$ 62.0

We have long-term purchase commitments for bandwidth usage and co-location with various Tier 1 network providers and data center operators. The minimum commitments related to bandwidth usage and co-location services under agreements currently in effect are approximately: $7.9 million for the remainder of 2009, $19.0 million for 2010, $6.0 million for 2011, $2.8 million for 2012 and $1.2 million for 2013 and beyond.

We anticipate cost of revenues will increase during the remainder of 2009. We expect to deliver more traffic on our network, which would result in higher expenses associated with the increased rack and co-location costs to support increased traffic; however, such costs are likely to be partially offset by lower bandwidth costs per unit. We anticipate depreciation expense related to our network equipment to decrease during the remainder of 2009 in absolute dollars compared to 2008. Additionally, we expect an increase in payroll and related costs, as we continue to make investments in our network to service our customer base. We expect that share-based compensation expense under ASC 718 (formerly FAS 123R) will be slightly higher during the remainder of 2009 compared to 2008.

General and Administrative

	Three months ended September 30,				Nine months ended September 30,			
	2009	2008	Increase (Decrease)	Percent Change	2009	2008	Increase (Decrease)	Percent Change
	(in thousands)				(in thousands)			
General and administrative	$ 6,405	$ 15,112	$ (8,707)	(58)%	$ 24,714	$ 37,346	$ (12,632)	(34)%

General and administrative expenses consist primarily of the following components:

payroll, share-based compensation and other related costs, including related expenses for executive, finance, legal, business applications, internal network management, human resources and other administrative personnel;

fees for professional services and litigation expenses;

rent and other facility-related expenditures for leased properties;

the provision for doubtful accounts; and

non-income related taxes.

General and administrative expenses decreased 58%, or $8.7 million, to $6.4 million for the three months ended September 30, 2009 as compared to $15.1 million for the three months ended September 30, 2008. The decrease in general and administrative expenses for the three months ended September 30, 2009 compared to the three months ended September 30, 2008 was primarily due to a decrease of $7.8 million in litigation expenses primarily related to our litigation with Akamai and MIT, Level 3 and the class action lawsuits filed against us beginning in August 2007, a decrease of $0.7 million in bad debt expense, a decrease of $0.1 million in payroll and related employee costs, and a decrease of $0.3 million in other expenses. These decreases were partially offset by an increase in professional fees of $0.1 million. For the nine months ended September 30, 2009, general and administrative expenses decreased 34%, or $12.6 million, to $24.7 million as compared to $37.3 million for the nine months ended September 30, 2008. The decrease in general and administrative expenses for the nine months ended September 30, 2009 compared to the nine months ended September 30, 2008 was primarily due to a decrease of $11.6 million in litigation expenses, a decrease of $0.9 million in professional fees, a decrease in bad debt expense of $0.8 million and a decrease in other costs of $0.8 million. The decrease in other costs is primarily due to a decrease in property taxes of approximately $0.5 million. Other expenses include such items rent, utilities, telephone, insurance, travel and travel related expenses, fees and licenses and property taxes. These decreases were partially offset by an increase in payroll and related employee costs of $0.7 million.

Additionally, general and administrative share-based compensation expense increased $0.1 million and $0.8 million, respectively for the three and nine month periods ended September 30, 2009 compared to the same periods of the prior year.

General and administrative expense was composed of the following (in millions):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	**2008**	**2009**	**2008**
Litigation expenses	$ 0.3	$ 8.1	$ 4.6	$ 16.2
Share-based compensation	1.8	1.7	5.8	5.0
Bad debt expense	0.2	0.9	2.6	3.4
Payroll and related employee costs	1.5	1.6	4.3	3.6
Professional fees	1.3	1.2	3.7	4.6
Other expenses	1.3	1.6	3.7	4.5
Total general and administrative	$ 6.4	$ 15.1	$ 24.7	$ 37.3

We expect general and administrative expenses to decrease in 2009 in absolute dollars and to decrease as a percentage of revenue compared to 2008. The decrease is due to lower costs associated with ongoing litigation, as well as decreases in general legal fees. We expect that share-based compensation expense under ASC 718 (formerly FAS 123R) will decrease during the remainder of 2009 compared to 2008.

Sales and Marketing

	Three months ended September 30,				Nine months ended September 30,			
	2009	**2008**	**Increase (Decrease)**	**Percent Change**	**2009**	**2008**	**Increase (Decrease)**	**Percent Change**
	(in thousands)				(in thousands)			
Sales and marketing	$ 8,060	$ 8,577	$ (517)	(6)%	$ 23,915	$ 25,684	$ (1,769)	(7)%

Sales and marketing expenses consist primarily of payroll and related costs, share-based compensation and commissions for personnel engaged in marketing, sales and service support functions, professional fees (consultants and recruiting fees), travel and travel-related expenses as well as advertising and promotional expenses.

Sales and marketing expenses decreased 6%, or $0.5 million, to $8.0 million for the three months ended September 30, 2009, as compared to $8.6 million for the three months ended September 30, 2008. For the nine months ended September 30, 2009, sales and marketing expenses decreased 7%, or $1.8 million, to $23.9 million, as compared to $25.7 million for the nine months ended September 30, 2008. The decrease in sales and marketing expenses for the three and nine month periods ended September 30, 2009 compared to the three and nine month periods ended September 30, 2008 was primarily due to a decrease of $0.2 million and $0.9 million, respectively in marketing programs, $0.1 million and $0.3 million, respectively in professional fees, a decrease of $0.1 million and $0.1, million, respectively in payroll and related employee costs and a decrease of $-0- and $0.1, million, respectively in other expenses. Other expenses included such items as rent and property taxes for our Europe and Asia Pacific sales offices, telephone and office supplies.

Additionally, sales and marketing share-based compensation expense decreased $0.1 million and $0.4 million, respectively for the three and nine month periods ended September 30, 2009 compared to the same periods of the prior year.

Sales and marketing expense was composed of the following (in millions):

	For the Three Months Ended September 30, 2009	For the Three Months Ended September 30, 2008	For the Nine Months Ended September 30, 2009	For the Nine Months Ended September 30, 2008
Payroll and related employee costs	$ 4.9	$ 5.0	$ 14.6	$ 14.7
Share-based compensation	1.3	1.4	3.7	4.1
Marketing programs	0.2	0.4	0.6	1.5
Travel and travel-related expenses	0.6	0.6	1.7	1.7
Professional fees	0.4	0.5	1.0	1.3
Other expenses	0.7	0.7	2.3	2.4
Total sales and marketing	$ 8.1	$ 8.6	$ 23.9	$ 25.7

We anticipate our sales and marketing expense will decrease in 2009 in absolute dollars and decline as a percentage of revenue compared to 2008. The decrease is due to reduced marketing costs and professional fees. We expect that share-based compensation expense under ASC 718 (formerly FAS 123R) will decrease during the remainder of 2009 compared to 2008.

Research and Development

	Three months ended September 30, 2009	2008	Increase (Decrease)	Percent Change	Nine months ended September 30, 2009	2008	Increase (Decrease)	Percent Change
	(in thousands)				(in thousands)			
Research and development	$ 2,024	$ 2,008	$ 16	1%	$ 5,878	$ 5,293	$ 585	11%

Research and development expenses consist primarily of payroll and related costs and share-based compensation expense for research and development personnel who design, develop, test and enhance our services, network and software.

Research and development expenses were $2.0 million for the three month periods ended September 30, 2009 and 2008, respectively. While total expenses remained constant, payroll and related employee costs increased by $0.4 million, associated with our hiring of additional network and software engineering personnel, which was off-set by a decrease in other expenses of $0.4 million, which was primarily due to decreased contract labor. For the nine months ended September 30, 2009, research and development expenses increased 11%, or $0.6 million, to $5.9 million, as compared to $5.3 million for the nine months ended September 30, 2008. The increase in research and development expenses in the nine month periods ended September 30, 2009 as compared to the nine month period ended September 30, 2008 was primarily due to $0.8 million in payroll and related employee costs associated with our hiring of additional network and software engineering personnel and an increase in share-based compensation of $0.2 million. These increases were partially offset by a decrease in other expenses of $0.4 million. Other expenses include such items as travel and travel related expenses, consulting, telephone, and office supplies.

Research and development expense was composed of the following (in millions):

	For the Three Months Ended September 30, 2009	For the Three Months Ended September 30, 2008	For the Nine Months Ended September 30, 2009	For the Nine Months Ended September 30, 2008
Payroll and related employee costs	$ 1.2	$ 0.8	$ 3.2	$ 2.4
Share-based compensation	0.6	0.6	1.9	1.7

Other expenses	0.2	0.6	0.8	1.2
Total research and development	$ 2.0	$ 2.0	$ 5.9	$ 5.3

We anticipate our research and development expenses will decrease slightly in 2009 in absolute dollars and as a percentage of revenue. We expect that share-based compensation expense under ASC 718 (formerly FAS 123R) will remain constant during the remainder of 2009 compared to 2008.

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Provision for Litigation

	Three months ended September 30,				Nine months ended September 30,			
	2009	2008 (in thousands)	Increase (Decrease)	Percent Change	2009	2008 (in thousands)	Increase (Decrease)	Percent Change
Provision for litigation	$	$ 2,343	$ (2,343)	NA	$ (65,645)	$ 16,220	$ (81,865)	(505)%

The provision for litigation related to our accrual for potential damages and interest associated with revenue generated from allegedly infringing methods associated with the Akamai litigation. For the year ended December 31, 2007, we recognized a provision for litigation in the amount of $45.5 million plus pre-judgment interest estimated to be $2.6 million. For the three and nine month periods ended September 30, 2008, we recognized a provision for litigation of $1.6 million and $14.8 million, respectively for potential on-going damages, plus additional interest of $0.7 million and $1.4 million respectively. During the year ended December 31, 2008 we accrued potential additional damages and interest of $17.5 million. Based upon the Court s April 24, 2009 order setting aside the adverse jury verdict and ruling that we did not infringe Akamai s 703 patent and that we are entitled to judgment as a matter of law, we reversed this provision for litigation in the three month period ended March 31, 2009, as we no longer believe that payment of any amounts represented by the litigation provision is probable.

Interest Expense

	Three months ended September 30,				Nine months ended September 30,			
	2009	2008 (in thousands)	Increase (Decrease)	Percent Change	2009	2008 (in thousands)	Increase (Decrease)	Percent Change
Interest expense	$ 11	$ 11	$		$ 33	$ 43	$ (10)	(23)%

Interest expense consists of the amortization of deferred financing costs.

Interest expense was $11,000 for the three month periods ended September 30, 2009 and 2008, respectively. For the nine months ended September 30, 2009, interest expense decreased 23%, or $10,000, to $33,000, as compared to $43,000 for the nine months ended September 30, 2008. The $11,000 for the three month periods ended September 30, 2009 and 2008 and the $33,000 and $43,000, for the nine month periods ended September 30, 2009 and 2008, respectively, represents the amortization of loan fees associated with our unused line of credit. As of September 30, 2009, we had no outstanding balances due on any of our credit facilities. We do not expect to incur any interest expense on debt during the remainder of 2009.

Interest Income

	Three months ended September 30,				Nine months ended September 30,			
	2009	2008 (in thousands)	Increase (Decrease)	Percent Change	2009	2008 (in thousands)	Increase (Decrease)	Percent Change
Interest income	$ 330	$ 1,203	$ (873)	(73)%	$ 1,050	$ 4,428	$ (3,378)	(76)%

Interest income includes interest earned on invested cash balances and marketable securities.

Interest income decreased 73%, to $0.3 million for the three months ended September 30, 2009, as compared to $1.2 million for the three months ended September 30, 2008. For the nine months ended September 30, 2009, interest income decreased 76%, to $1.0 million, as compared to $4.4 million for the nine months ended September 30, 2008. The decrease in interest income for the three and nine month periods ended September 30, 2009 was primarily due to lower market interest rates on decreased cash balances. We anticipate interest income to decrease as a result of expected lower average cash balances as well as the decreased interest rates.

Other Income

	Three months ended September 30,				Nine months ended September 30,			
	2009	2008	Increase (Decrease)	Percent Change	2009	2008	Increase (Decrease)	Percent Change
	(in thousands)				(in thousands)			
Other income (expense)	$ 15	$ 410	$ (395)	(96)%	$ 131	$ 203	$ (72)	(35)%

Other income (expense) decreased 96% or $0.4 million for the three month period ended September 30, 2009, as compared to $0.4 million for the three months ended September 30, 2008. For the nine months ended September 30, 2009, other income (expense) decreased 35%, or $0.1 million, to $0.1 million, as compared to $0.2 million for the nine months ended September 30, 2008. Other income (expense) for the three and nine months ended September 30, 2009 consists primarily of foreign exchange gains (losses) resulting from the re-measurement of certain accounts payable and receivables denominated in a foreign currency, and the effect of

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exchange rates on monetary balance sheet and income statement items resulting from foreign operations. Additionally, other income (expense) for the nine month period ended September 30, 2009 includes a non-income tax related payment of approximately $64,000. Other income (expense) for the three and nine month periods ended September 30, 2008 primarily consists of foreign exchange gains resulting from the re-measurement of accounts payable for invoices denominated in a foreign currency, and the effect of exchange rates on monetary balance sheet and income statement items resulting from foreign operations.

Income Tax Expense (Benefit)

	Three months ended September 30,				Nine months ended September 30,			
	2009	2008	Increase (Decrease)	Percent Change	2009	2008	Increase (Decrease)	Percent Change
	(in thousands)				(in thousands)			
Income tax expense (benefit)	$ 61	$ 130	$ (69)	(53)%	$ 552	$ (78)	$ 630	808%

Based upon our estimated annual effective tax rate and after consideration of discrete tax items in the quarter, our estimated tax expense for the nine months ended September 30, 2009 consisted mainly of foreign and state expense for income taxes. For the nine months ended September 30, 2009, our expense for income taxes was $0.6 million, which included $0.7 million for income taxes related primarily to our foreign operations, $0.1 million for state tax expense and $0.2 million reduction of existing reserves and interest for potential liabilities in state and foreign taxing jurisdictions. Due to our providing for a valuation allowance on tax assets, our domestic tax losses, tax rate differentials in our foreign subsidiaries, and discrete items for the quarter, our effective tax expense on our income before taxes of $45.2 million for the nine months ended September 30, 2009 is lower than the U.S. statutory federal income tax expense.

On April 24, 2009, the Court issued its order and memorandum setting aside the adverse jury verdict and ruling that we did not infringe Akamai s 703 patent and that we were entitled to judgment as a matter of law. Based upon the Court s April 24, 2009 order we reversed the $65.6 million provision for litigation previously recorded for this lawsuit as we no longer believe that payment of any amounts represented by the litigation provision is probable. In accordance with ASC 740 (formerly FIN 18), we recorded the tax effect of the reversal discretely in the quarter. The discrete entry related to the reversal did not have any tax effect as we have a full valuation allowance recorded on our deferred tax assets.

In 2008, approximately $2.0 million of stock-based compensation expense was not deductible for tax purposes, as certain executives and other employees made tax elections which established tax bases in these awards granted at lower than the fair value recognized within the financial statements. Future non-tax deductible expenses related to these equity awards are expected to be $2.6 million and $0.6 million for 2009 and 2010, respectively, based upon the unvested portion of the equity awards outstanding at December 31, 2008, and the anticipated vesting at that time.

During the nine month period ended September 30, 2009, we performed an assessment of the recoverability of deferred tax assets and determined that there was sufficient negative evidence as a result of our cumulative losses to conclude that it was more likely than not that our deferred tax assets would not be realized and accordingly maintained a full valuation allowance. In calculating our effective income tax rate for 2009, no benefit is provided for temporary differences that increase deferred tax assets.

Liquidity and Capital Resources

To date, we have financed our operations primarily through the following transactions:

- private sales of common and preferred stock and subordinated notes;

- an initial public offering of our common stock in June 2007;

borrowing on credit facilities; and

cash generated by operations.

As of September 30, 2009, our cash, cash equivalents and marketable securities classified as current totaled $152.8 million.

Operating Activities

Net cash used in operating activities was $5.6 million for the nine months ended September 30, 2009, compared to net cash used in operating activities of $7.2 million for the nine months ended September 30, 2008. The change to cash used in operating activities for the nine months ended September 30, 2009 was primarily due to our net income for the nine months ended September 30, 2009, and changes in working capital, including decreases in accounts receivable of $1.8 million, which is the result of increased focus on both the quality of our customers and our continued collection efforts, partially offset by increases in other assets of $8.3 million which is primarily comprised of the long-term portion of advanced payments made to a telecommunications provider and prepaid expenses of $1.3 million, resulting primarily from an increase in refundable VAT payments and decreases in accounts payable of $5.2 million and other current liabilities of $6.7 million, primarily due to the timing of payments, and a decrease in deferred revenue of $2.1 million.

We expect that cash provided by operating activities, if any, may not be sufficient to cover new purchases of property and equipment during 2009 and litigation expenses associated with patent litigation. The timing and amount of future working capital changes and our ability to manage our days sales outstanding will also affect the future amount of cash used in or provided by operating activities.

Investing Activities

Cash used in investing activities was $30.0 million for the nine months ended September 30, 2009, compared to cash provided by investing activities of $15.4 million for the nine months ended September 30, 2008. Cash used in investing activities was principally comprised of cash used for the purchase of short-term marketable securities, as well as, for capital expenditures primarily for computer equipment associated with the build-out and expansion of our CDN, partially offset by cash generated from the sale of short-term marketable securities.

We expect to have ongoing capital expenditure requirements as we continue to invest in and expand our CDN. We currently anticipate making aggregate capital expenditures of approximately 18% to 19% of total revenue in 2009.

Financing Activities

Cash provided by financing activities decreased $1.0 million to $0.2 million for the nine months ended September 30, 2009, as compared to $1.3 million for the nine months ended September 30, 2008. The decrease is primarily due to the escrow distribution related to the Akamai litigation of $1.0 million for the nine months ended September 30, 2008.

At September 30, 2009 we had no outstanding balance on any of our credit facilities and we had an unused line of credit of up to $5.0 million dollars. Under the terms of the line of credit, we can borrow up to 50% of the cash balances we hold at the bank, up to a maximum of $5.0 million dollars. We do not anticipate having to utilize the line of credit for the remainder of 2009.

In connection with our Series B preferred stock financing in July 2006, an escrow account was established with an initial balance of approximately $10.1 million to serve as security for the indemnification obligations of our stockholders tendering shares in that financing and to fund 50% of the ongoing monthly expenses associated with the Akamai litigation. In May 2007, we, the tendering stockholders and the Series B preferred stock investors agreed to distribute $3.7 million of the escrow account to the tendering stockholders upon the closing of our initial public offering. During the three and nine month periods ended September 30, 2008, we received approximately $-0- and $1.0 million, respectively, in reimbursements from this escrow. At September 30, 2009 and 2008, the balance outstanding in the escrow was zero.

Changes in cash, cash equivalents and marketable securities are dependent upon changes in, among other things, working capital items such as deferred revenues, accounts payable, accounts receivable, accrued provision for litigation and various accrued expenses, as well as changes in our capital and financial structure due to debt repurchases and issuances, stock option exercises, sales of equity investments and similar events.

We believe that our existing cash and cash equivalents will be sufficient to meet our anticipated cash needs for at least the next 12 months. If the assumptions underlying our business plan regarding future revenue and expenses change, or if unexpected opportunities or needs arise, we may seek to raise additional cash by selling equity or debt securities. If additional funds are raised through the issuance of equity or debt securities, these securities could have rights, preferences and privileges senior to those accruing to holders of common stock, and the terms of such debt could impose restrictions on our operations. The sale of additional equity or convertible debt securities would also result in additional dilution to our stockholders. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, operating results and financial condition could be harmed.

Contractual Obligations, Contingent Liabilities and Commercial Commitments

In the normal course of business, we make certain long-term commitments for operating leases, primarily office facilities, bandwidth and computer rack space. These leases expire on various dates ranging from 2009 to 2015. We expect that the growth of our business will require us to continue to add to and increase our long-term commitments in 2009 and beyond. As a result of our growth strategies, we believe that our liquidity and capital resources requirements will grow in absolute dollars but will be generally consistent with that of historical periods on an annual basis as a percentage of net revenue.

The following table presents our contractual obligations and commercial commitments, as of September 30, 2009 over the next five years and thereafter (in thousands):

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Contractual Obligations as of September 30, 2009	Total	Payments Due by Period Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating Leases					
Bandwidth leases	$ 19,172	$ 11,287	$ 6,319	$ 1,526	$ 40
Rack space leases	17,661	13,552	4,109		
Real estate leases	1,196	949	247		
Total operating leases	38,029	25,788	10,675	1,526	40
Capital leases					
Bank debt					
Interest on bank debt					
Total commitments	$ 38,029	$ 25,788	$ 10,675	$ 1,526	$ 40

Off Balance Sheet Arrangements

We do not have, and have never had, any relationships with unconsolidated entities or financial partnerships; such entities are often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Use of Non-GAAP Financial Measures

To evaluate our business, we consider and use Non-GAAP net income (loss) and EBITDA adjusted for share-based compensation and litigation and damage costs as a supplemental measure of operating performance. These measures include the same adjustments that management takes into account when it reviews and assesses operating performance on a period-to-period basis. We consider Non-GAAP net income (loss) to be an important indicator of overall business performance because it allows us to illustrate the impact of the effects of share-based compensation, litigation expenses and provision for litigation. We define EBITDA as GAAP net income (loss) before interest income, interest expense, other income and expense, provision for income taxes, depreciation and amortization. We believe that EBITDA provides a useful metric to investors to compare us with other companies within our industry and across industries. We define EBITDA adjusted for share-based compensation and litigation and damage costs as EBITDA plus expenses that we do not consider reflective of our ongoing operations. We use EBITDA adjusted for share-based compensation and litigation and damage costs as a supplemental measure to review and assess operating performance. We also believe use of EBITDA adjusted for share-based compensation and litigation and damage costs facilitates investors use of operating performance comparisons from period to period. In addition, it should be noted that our performance-based executive officer bonus structure is tied closely to our performance as measured in part by certain non-GAAP financial measures.

The terms Non-GAAP net income (loss), EBITDA and EBITDA adjusted for share-based compensation and litigation and damage costs are not defined under U.S. generally accepted accounting principles, or U.S. GAAP, and are not measures of operating income, operating performance or liquidity presented in accordance with U.S. GAAP. Our Non-GAAP net income (loss), EBITDA and EBITDA adjusted for share-based compensation and litigation and damage costs have limitations as analytical tools, and when assessing our operating performance, Non-GAAP net income (loss), EBITDA and EBITDA adjusted for share-based compensation and litigation and damage costs should not be considered in isolation, or as a substitute for net income (loss) or other consolidated income statement data prepared in accordance with U.S. GAAP. Some of these limitations include, but are not limited to:

EBITDA and EBITDA adjusted for share-based compensation and litigation and damage costs do not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;

they do not reflect changes in, or cash requirements for, our working capital needs;

they do not reflect the cash requirements necessary for litigation costs;

they do not reflect the interest expense, or the cash requirements necessary to service interest or principal payments, on any debt that we may incur;

they do not reflect income taxes or the cash requirements for any tax payments;

although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will be replaced sometime in the future, and EBITDA and EBITDA adjusted for share-based compensation and litigation and damage costs do not reflect any cash requirements for such replacements;

while share-based compensation is a component of operating expense, the impact on our financial statements compared to other companies can vary significantly due to such factors as the assumed life of the options and the assumed volatility of our common stock; and

other companies may calculate EBITDA and EBITDA adjusted for share-based compensation and litigation and damage costs differently than we do, limiting their usefulness as comparative measures.

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We compensate for these limitations by relying primarily on our GAAP results and using Non-GAAP net income (loss) and EBITDA adjusted for share-based compensation and litigation and damage costs only as supplemental support for management s analysis of business performance. Non-GAAP net income (loss), EBITDA and EBITDA adjusted for share-based compensation and litigation and damage costs are calculated as follows for the periods presented in thousands.

Reconciliation of Non-GAAP Financial Measures

In accordance with the requirements of Regulation G issued by the Securities and Exchange Commission, we are presenting the most directly comparable GAAP financial measures and reconciling the non-GAAP financial metrics to the comparable GAAP measures.

Reconciliation of GAAP Net Income (Loss) to Non-GAAP Net Income (Loss)

(In thousands)

(Unaudited)

	Three Months Ended				Nine Months Ended	
	September 30, 2009	June 30, 2009	September 30, 2008	June 30, 2008	September 30, 2009	September 30, 2008
GAAP net (loss) income	$ (5,220)	$ (5,298)	$ (15,352)	$ (15,331)	$ 44,617	$ (49,126)
Provision for potential litigation damages			2,343	6,743	(65,645)	16,220
Share-based compensation	4,369	4,281	4,305	4,285	13,137	12,549
Litigation defense expenses	273	367	8,189	2,667	4,585	16,222
Non-GAAP net loss	$ (578)	$ (650)	$ (515)	$ (1,636)	$ (3,306)	$ (4,135)

Reconciliation of GAAP Net Income (Loss) to EBITDA to EBITDA

Adjusted for Share-Based Compensation and Litigation and Damage Costs

(In thousands)

(Unaudited)

	Three Months Ended				Nine Months Ended	
	September 30, 2009	June 30, 2009	September 30, 2008	June 30, 2008	September 30, 2009	September 30, 2008
GAAP net (loss) income	$ (5,220)	$ (5,298)	$ (15,352)	$ (15,331)	$ 44,617	$ (49,126)
Depreciation and amortization of other intangibles	6,645	6,665	6,950	6,503	20,398	19,713
Interest expense	11	11	11	11	33	43
Interest and other income	(346)	(226)	(1,613)	(957)	(1,181)	(4,631)
Income tax (benefit) expense	61	171	130	(25)	552	(78)
EBITDA	$ 1,151	$ 1,323	$ (9,874)	$ (9,799)	$ 64,419	$ (34,079)
Provision for litigation			2,343	6,743	(65,645)	16,220
Share-based compensation	4,369	4,281	4,305	4,285	13,137	12,549
Litigation defense expenses	273	367	8,189	2,667	4,585	16,222
Adjusted EBITDA	$ 5,793	$ 5,971	$ 4,963	$ 3,896	$ 16,496	$ 10,912

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Interest Rate Risk

Our exposure to market risk for changes in interest rates relates primarily to our debt and investment portfolio. In our investment portfolio, we do not use derivative financial instruments. Our investments are primarily with our commercial and investment banks and, by policy, we limit the amount of risk by investing primarily in money market funds, United States Treasury obligations, high-quality corporate and municipal obligations and certificates of deposit. We do not believe that a 10% change in interest rates would have a significant impact on our interest income, operating results or liquidity.

Foreign Currency Risk

Substantially all of our customer agreements are denominated in U.S. dollars, and therefore our revenue is not subject to foreign currency risk. Because we have operations in Europe and Asia, however, we may be exposed to fluctuations in foreign exchange rates with respect to certain operating expenses and cash flows. Additionally, we may continue to expand our operations globally and sell to customers in foreign locations, potentially with customer agreements denominated in foreign currencies, which may increase our exposure to foreign exchange fluctuations. At this time, we do not have any foreign hedge contracts.

Inflation Risk

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition and results of operations.

Item 4. Controls and Procedures

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

We are responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in SEC Rule 13a-15(e) and 15d-15(e). We maintain disclosure controls and procedures, as such term is defined in SEC Rule 13a-15(e) and 15d-15(e), that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission s rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by SEC Rule 13a-15(b), we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of September 30, 2009. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

With the exception of the change in controls noted below, no additional changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended September 30, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

During the fourth quarter of 2008, we implemented a new customer invoicing and revenue reporting system. As of December 31, 2008, the system had not been fully implemented. We anticipate that this new invoicing and revenue reporting system will further enhance our internal controls over financial reporting. We expected that the new system would be fully implemented during the first quarter of 2009. We currently are continuing to make modification and enhancements to the system. The system is expected to be fully implemented during 2009.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are involved in litigation with Akamai Technologies, Inc. and the Massachusetts Institute of Technology relating to a claim of patent infringement. The action was filed in June 2006 in the U.S. District Court for the District of Massachusetts. The trial date was set for February 2008 with respect to four claims in U.S. Patent No. 6,108,703 (the 703 patent). In February 2008, a jury returned a verdict in this lawsuit, finding that we infringed four claims of the 703 patent at issue and rejecting our invalidity defenses. The jury awarded an aggregate of approximately $45.5 million which includes lost profits, reasonable royalties and price erosion damages for the period April 2005 through December 31, 2007. In addition, the jury awarded pre-judgment interest which we estimated to be $2.6 million at December 31, 2007. We recorded the aggregate $48.1 million as a provision for litigation as of December 31, 2007. During 2008 we recorded an additional provision of approximately $17.5 million for potential additional infringement damages and interest.

On July 1, 2008, the Court denied our 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 our equitable defenses. The Court conducted a bench trial in November 2008 regarding our equitable defenses. We also filed a motion for reconsideration of the Court s earlier denial of our motion for JMOL. Our 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 our initial motion for JMOL. On April 24, 2009 the Court issued its order and memorandum setting aside the adverse jury verdict and ruling that we did not infringe Akamai s 703 patent and that we are entitled to judgment as a matter of law. Based upon the Court s April 24, 2009 order we have reversed the $65.6 million provision for litigation previously recorded for this lawsuit as we no longer believe that payment of any amounts represented by the litigation provision is probable. The Court entered final judgment in favor of us. Akamai filed a notice of appeal of the Court s decision on May 26, 2009 and filed its appeal brief on September 15, 2009. We cannot assure you that this lawsuit ultimately will be resolved in our favor.

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We expect that the litigation will continue to be expensive, time consuming and a distraction to our management in operating our business.

In August 2007, we, certain of our officers and directors, and the firms that served as the lead underwriters in our initial public offering were named as defendants in several purported class action lawsuits. These lawsuits have been consolidated into a single lawsuit in U.S. District Court for the District of Arizona. The consolidated complaint asserts causes of action under Sections 11, 12 and 15 of the Securities Act of 1933, as amended, on behalf of a professed class consisting of all those who were allegedly damaged as a result of acquiring our common stock in our initial public offering (IPO) between June 8, 2007 and August 8, 2007. The complaint seeks compensatory damages and plaintiffs costs and expenses in the litigation. The complaint alleges, among other things, that we omitted and/or misstated certain facts concerning the seasonality of our business and that the loss of revenue with respect to certain customers. On March 17, 2008, we and the individual defendants moved to dismiss all of the plaintiffs claims, and a hearing was held on this motion on June 16, 2008. On August 8, 2008, the court granted the motion to dismiss, dismissing plaintiffs claims under Section 12 with prejudice and granting leave to amend the claims under Sections 11 and 15. Plaintiffs chose not to amend the claims under Sections 11 and 15, and on August 29, 2008 the court entered judgment in favor of us. On September 5, 2008 Plaintiffs filed a notice of appeal, and appellate briefs were filed by the parties in January and February 2009. We believe that we and the individual defendants have meritorious defenses to the claims made in the complaint and we intend to continue to contest the lawsuit vigorously. We do have in place Directors and Officers Liability Insurance and notice of this matter has been given to the insurance carriers. The insurance has reimbursed certain of the expenses incurred by us in defending this action. We are not able at this time to estimate the range of a potential loss nor do we believe that a loss is probable. Therefore, we have made no provision for this lawsuit in our financial statements.

In December 2007, Level 3 Communications, LLC filed a lawsuit against us in the U.S. District Court for the Eastern District of Virginia alleging that we were infringing certain patents Level 3 acquired from Savvis Communications Corp. In addition to monetary relief, including treble damages, interest, fees and costs, the complaint sought an order permanently enjoining us from conducting our business in a manner that infringed the relevant patents. A jury trial was conducted in the U.S. District Court for the Eastern District of Virginia in January 2009, and on January 23, 2009 the jury returned a verdict favorable to Limelight finding that Limelight did not infringe the Level 3 patents. We believe the jury verdict finding Limelight does not infringe the Level 3 patents is correct, and that the claims of infringement asserted against us by Level 3 in the litigation were without merit. The Court denied Level 3 s subsequent motion for judgment as a matter of law or alternatively for a new trial, and entered a judgment in our favor. Level 3 filed a notice of appeal on July 21, 2009 and filed its appeal brief on October 5, 2009. We intend to continue to vigorously defend the action. There can be no assurance at this time that the lawsuit ultimately will be resolved in our favor. In light of the favorable jury verdict, we are not able at this time to estimate the range of potential loss nor do we believe that a loss is probable. Therefore, we have made no provision for this lawsuit in our financial statements.

From time to time, we also may become involved in legal proceedings arising in the ordinary course of our business.

Item 1A. Risk Factors

Investments in the equity securities of publicly traded companies involve significant risks. Our business, prospects, financial condition or operating results could be materially adversely affected by the risks identified below, as well as other risks not currently known to us or that we currently consider immaterial. The trading price of our common stock could decline due to any of these risks, and you may lose all or part of your investment. In assessing the risks described below, you should also refer to the information contained in this report on Form 10-Q, including our unaudited condensed consolidated financial statements and the related notes, as well as our Annual Report on Form 10-K for the year ended December 31, 2008 and other documents that we file from time to time with the Securities and Exchange Commission.

Risks Related to Our Business

We are a party to several lawsuits, and an adverse outcome in any or all of those lawsuits is possible, and an adverse outcome could have a significant, adverse effect on our financial condition and operations. If an injunction were entered against us it could force us to cease providing our CDN services.

We are a defendant in three significant lawsuits, (see discussion in Legal Proceedings in Part II, Item 1 of this quarterly report on Form 10-Q). In each case we currently have favorable rulings, but we cannot provide any assurance that these favorable rulings won t be overturned or reversed on appeal, or that the ultimate outcome of any of these lawsuits won t be materially adverse to us. The expenses of defending these lawsuits and other lawsuits to which we may become a party, particularly fees paid to our lawyers and expert consultants, have been and will continue to be significant and will continue to adversely affect our operating results during the pendency of the lawsuits. This litigation will also continue to be a distraction to our management in operating our business.

In February 2008, a jury returned a verdict in a patent infringement lawsuit filed by Akamai Technologies, Inc., or Akamai, and the Massachusetts Institute of Technology, or MIT, against us, finding that we infringed four claims of the patent at issue and rejecting our invalidity defenses. The jury awarded Akamai an aggregate of approximately $45.5 million in lost profits, reasonable royalties and price erosion damages, plus pre-judgment interest estimated to be $2.6 million that we recorded in 2007. During 2008 we recorded an additional provision of approximately $17.5 million for potential additional infringement damages and interest.

The Court conducted a bench trial in November 2008, regarding our equitable defenses; and we filed a motion for reconsideration of the Court s earlier denial of our motion for Judgment as a Matter of Law (JMOL). Our 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 our initial motion for JMOL. On April 24, 2009 the Court issued its order and memorandum setting aside the adverse jury verdict and ruling that Limelight does not infringe Akamai s 703 patent and that Limelight is entitled to judgment as a matter of law. Based upon the Court s April 24, 2009 order we have reversed the provision for litigation relating to this matter as we no longer believe that payment of any amounts represented by the litigation provision is probable. Although the Court has entered judgment in our favor and we believe the ruling of the Court is correct, Akamai has appealed the judgment and we cannot provide any assurance that the lawsuit ultimately will be resolved in our favor. An adverse ruling could seriously impact our ability to conduct our business and to offer our products and services to our customers. A permanent injunction could prevent us from operating our CDN to deliver certain types of traffic, which could impact the viability of our business. Any adverse ruling, in turn, would harm our revenue, market share, reputation, liquidity and overall financial position.

In January 2009, in a patent infringement lawsuit filed by Level 3 Communications LLC, or Level 3, against us, a jury returned a verdict finding that we did not infringe any of the claims of the patents at issue in that case. The Court denied Level 3 s subsequent motion for JMOL or alternatively for a new trial, and entered judgment in our favor. Level 3 has appealed the judgment. Although we believe the jury verdict and the judgment in this matter are correct, we cannot provide any assurance at this time that the lawsuit ultimately will be resolved in our favor. An adverse ruling could seriously impact our ability to conduct our business and to offer our products and services to our customers. A permanent injunction could prevent us from operating our CDN to deliver certain types of traffic, which could impact the viability of our business. Any adverse ruling, in turn, would harm our revenue, market share, reputation, liquidity and overall financial position.

In August 2007, we, certain of our officers and directors, and the firms that served as the lead underwriters in our initial public offering were named as defendants in several purported class action lawsuits. These lawsuits have been consolidated into a single lawsuit in U.S. District Court for the District of Arizona. The consolidated complaint asserts causes of action under Sections 11, 12 and 15 of the Securities Act of 1933, as amended, on behalf of a professed class consisting of all those who were allegedly damaged as a result of acquiring our common stock in our initial public offering (IPO) between June 8, 2007 and August 8, 2007. The complaint seeks compensatory damages and plaintiffs costs and expenses in the litigation. The complaint alleges, among other things, that we omitted and/or misstated certain facts concerning the seasonality of our business and that the loss of revenue with respect to certain customers. On March 17, 2008, we and the individual defendants moved to dismiss all of the plaintiffs claims, and a hearing was held on this motion on June 16, 2008. On August 8, 2008, the court granted the motion to dismiss, dismissing plaintiffs claims under Section 12 with prejudice and granting leave to amend the claims under Sections 11 and 15. Plaintiffs chose not to amend the claims under Sections 11 and 15, and on August 29, 2008 the court entered judgment in favor of us. On September 5, 2008 Plaintiffs filed a notice of appeal, and appellate briefs were filed by the parties in January and February 2009. We do have in place Directors and Officers Liability Insurance and notice of this matter has been given to the insurance carriers. The insurance has reimbursed certain of the expenses incurred by us in defending this action. Although we believe that we and the individual defendants have meritorious defenses to the claims made in the complaint, there can be no assurance at this time that the lawsuit will ultimately be resolved in our favor. If we receive an adverse ruling in this case and the judgment exceeds the amount of our Directors and Officers Liability Insurance or that insurance is not available to satisfy the judgment, such a ruling could harm our liquidity and overall financial position.

We may need to defend our intellectual property and processes against patent or copyright infringement claims, which would cause us to incur substantial costs and threaten our ability to do business.

Companies, organizations or individuals, including our competitors, may hold or obtain patents or other proprietary rights that would prevent, limit or interfere with our ability to make, use or sell our services or develop new services, which could make it more difficult for us to operate our business. From time to time, we may receive inquiries from holders of patents inquiring whether we infringe their proprietary rights. Companies holding Internet-related patents or other intellectual property rights are increasingly bringing suits alleging infringement of such rights or otherwise asserting their rights and seeking licenses. Any litigation or claims, whether or not valid, could result in substantial costs and diversion of resources. See Legal Proceeding in Part II, Item 1 of this quarterly report on Form 10-Q. In addition, if we are determined to have infringed upon a third party s intellectual property rights, we may be required to do one or more of the following:

- cease selling, incorporating or using products or services that incorporate the challenged intellectual property;

pay substantial damages;

obtain a license from the holder of the infringed intellectual property right, which license may or may not be available on reasonable terms or at all; or redesign products or services.

If we are forced to take any of these actions, our business may be seriously harmed. In the event of a successful claim of infringement against us and our failure or inability to obtain a license to the infringed technology, our business and operating results could be harmed.

We currently face competition from established competitors and may face competition from others in the future.

We compete in markets that are intensely competitive, rapidly changing and characterized by constantly declining prices and vendors offering a wide range of content delivery solutions. We have experienced and expect to continue to experience increased competition, and particularly aggressive price competition. Many of our current competitors, as well as a number of our potential competitors, have longer operating histories, greater name recognition, broader customer relationships and industry alliances and substantially greater financial, technical and marketing resources than we do. As a consequence of the competitive dynamics in our market we have experienced reductions in our prices, which in turn adversely affect our revenue, gross margin and operating results.

Our primary competitors include content delivery service providers such as Akamai, Level 3 Communications, AT&T, CDNetworks and Internap Network Services Corporation, which acquired VitalStream. Also, as a result of the growth of the content delivery market, a number of companies have recently entered or are currently attempting to enter our market, either directly or indirectly, some of which may become significant competitors in the future. Our competitors may be able to respond more quickly than we can to new or emerging technologies and changes in customer requirements. Given the relative ease by which customers typically can switch among CDN providers, differentiated offerings or pricing by competitors could lead to a rapid loss of customers. Some of our current or potential competitors may bundle their offerings with other services, software or hardware in a manner that may discourage content providers from purchasing the services that we offer. In addition, as we expand internationally, we face different market characteristics and competition with local content delivery service providers, many of which are very well positioned within their local markets. Increased competition could result in price reductions and revenue shortfalls, loss of customers and loss of market share, which could harm our business, financial condition and results of operations.

If we fail to manage future growth effectively, we may not be able to market and sell our services successfully.

We have recently expanded our operations significantly, increasing our total number of employees from 29 at December 31, 2004 to 321 at September 30, 2009, and we anticipate that further significant expansion will be required. Our future operating results depend to a large extent on our ability to manage this expansion and growth successfully. Risks that we face in undertaking this expansion include: training new sales personnel to become productive and generate revenue; forecasting revenue; controlling expenses and investments in anticipation of expanded operations; implementing and enhancing our content delivery network, or CDN, and administrative infrastructure, systems and processes; addressing new markets; and expanding international operations. A failure to manage our growth effectively could materially and adversely affect our ability to market and sell our products and services.

If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements could be impaired, which could adversely affect our operating results, our ability to operate our business and investors views of us.

We must ensure that we have adequate internal financial and accounting controls and procedures in place so that we can produce accurate financial statements on a timely basis. We are required to spend considerable effort on establishing and maintaining our internal controls, which is costly and time-consuming and needs to be re-evaluated frequently. We have very limited experience in designing and testing our internal controls. For example, during the third quarter of 2007, we discovered material weaknesses in our system of internal controls over our revenue recognition and stock-based compensation processes that required us to restate our previously reported consolidated financial statements for the three-and nine-months ended September 30, 2006, the three-months and year ended December 31, 2006, the three-months ended March 31, 2007, and the three-and-six months ended June 30, 2007.

We have only operated as a public company since June 2007 and we will continue to incur significant legal, accounting and other expenses as we comply with the Sarbanes-Oxley Act of 2002, as well as new rules subsequently implemented by the Securities and Exchange Commission and the Nasdaq Stock Market s Global Market. These rules impose various requirements on public companies, including requiring changes in corporate governance practices, increased reporting of compensation arrangements and other requirements. Our management and other personnel will continue to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. These rules and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

Section 404 of the Sarbanes-Oxley Act of 2002 requires that we include in our annual report our assessment of the effectiveness of our internal control over financial reporting and our audited financial statements as of the end of each fiscal year. Furthermore, our independent registered public accounting firm, Ernst & Young LLP, (E&Y), is required to report on whether it believes we maintained, in all material respects, effective internal control over financial reporting as of the end of the year. We successfully completed our assessment and obtained E&Y s attestation as to the effectiveness of our internal control over financial reporting as of

December 31, 2008. Our continued compliance with Section 404 will require that we incur substantial expense and expend significant management time on compliance related issues. We currently do not have an internal audit group and use an international accounting firm to assist us with our assessment of the effectiveness of our internal controls over financial reporting. In future years, if we fail to timely complete this assessment, or if E&Y cannot timely attest, there may be a loss of public confidence in our internal controls, the market price of our stock could decline and we could be subject to regulatory sanctions or investigations by the Nasdaq Stock Market s Global Market, the Securities and Exchange Commission or other regulatory authorities, which would require additional financial and management resources. In addition, any failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our operating results or cause us to fail to timely meet our regulatory reporting obligations.

Our limited operating history makes evaluating our business and future prospects difficult, and may increase the risk of your investment.

Our Company has only been in existence since 2001. A significant amount of our growth, in terms of employees, operations and revenue, has occurred since 2004. For example, our revenue has grown from $5.0 million in 2003 to $65.2 million in 2006 to $103.1 million in 2007 and $129.5 million in 2008. As a consequence, we have a limited operating history which makes it difficult to evaluate our business and our future prospects. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly changing industries, such as the risks described in this quarterly report on Form 10-Q. If we do not address these risks successfully, our business will be harmed.

We may lose customers if they elect to develop content delivery solutions internally.

Our customers and potential customers may decide to develop their own content delivery solutions rather than outsource these solutions to CDN services providers like us. This is particularly true as our customers increase their operations and begin expending greater resources on delivering their content using third-party solutions. If we fail to offer CDN services that are competitive to in-sourced solutions, we may lose additional customers or fail to attract customers that may consider pursuing this in-sourced approach, and our business and financial results would suffer.

We may lose customers if they are unable to build business models that effectively monetize delivery of their content.

Some of our customers will not be successful in selling advertising or otherwise monetizing the content we deliver on their behalf and consequently may not be successful in creating a profitable business model. This will result in some of our customers discontinuing their Internet or web-based business operations and discontinuing use of our services and products. Further, weakness and related uncertainty in the global financial markets and economy which has included, among other things, significant reductions in available capital and liquidity from banks and other providers of credit, substantial reductions and/or fluctuations in equity and currency values worldwide and concerns that the worldwide economy may be in a prolonged recessionary period may materially adversely impact our customers access to capital or willingness to spend capital on our services or in some cases, ultimately cause the customer to file for protection from creditors under applicable insolvency or bankruptcy laws or simply go out of business. This uncertainty may also impact our customers levels of cash liquidity, which could affect their ability or willingness to timely pay for services that they will order or have already ordered from us. From time to time we discontinue service to customers for non-payment of services. We expect further customers may discontinue operations or not be willing or able to pay for services that they have ordered from us. Further loss of customers may adversely affect our financial results.

Rapidly evolving technologies or new business models could cause demand for our CDN services to decline or could cause these services to become obsolete.

Customers or third parties may develop technological or business model innovations that address content delivery requirements in a manner that is, or is perceived to be, equivalent or superior to our CDN services. If competitors introduce new products or services that compete with or surpass the quality or the price/performance of our services, we may be unable to renew our agreements with existing customers or attract new customers at the prices and levels that allow us to generate attractive rates of return on our investment. For example, one or more third parties might develop improvements to current peer-to-peer technology, which is a technology that relies upon the computing power and bandwidth of its participants, such that this technological approach is better able to deliver content in a way that is competitive to our CDN services, or even makes CDN services obsolete. We may not anticipate such developments and may be unable to adequately compete with these potential solutions. In addition, our customers business models may change in ways that we do not anticipate and these changes could reduce or eliminate our customers needs for CDN services. If this occurred, we could lose customers or potential customers, and our business and financial results would suffer. As a result of these or similar potential developments, in the future it is possible that competitive dynamics in our market may require us to reduce our prices, which could harm our revenue, gross margin and operating results.

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If we are unable to sell our services at acceptable prices relative to our costs, our revenue and gross margins will decrease, and our business and financial results will suffer.

Prices for content delivery services have fallen in recent years and are likely to fall further in the future. We have invested significant amounts in purchasing capital equipment to increase the capacity of our content delivery services. For example, in 2006, 2007 and 2008 we invested $40.6 million, $22.7 million and $18.1 million, respectively, in capital expenditures primarily for computer equipment associated with the build-out and expansion of our CDN. For the nine month period ended September 30, 2009, we invested $16.6 million. Our investments in our infrastructure are based upon our assumptions regarding future demand and also prices that we will be able to charge for our services. These assumptions may prove to be wrong. If the price that we are able to charge customers to deliver their content falls to a greater extent than we anticipate, if we over-estimate future demand for our services or if our costs to deliver our services do not fall commensurate with any future price declines, we may not be able to achieve acceptable rates of return on our infrastructure investments and our gross profit and results of operations may suffer dramatically.

During 2009 and 2010, as we further expand our CDN and begin to refresh our network equipment, we expect our capital expenditures to increase when compared to expenditures we made in 2008. As a consequence, we are dependent on significant future growth in demand for our services to provide the necessary gross profit to pay these additional expenses. If we fail to generate significant additional demand for our services, our results of operations will suffer and we may fail to achieve planned or expected financial results. There are numerous factors that could, alone or in combination with other factors, impede our ability to increase revenue, moderate expenses or maintain gross margins, including:

- failure to increase sales of our core services;
- increases in electricity, bandwidth and rack space costs or other operating expenses, and failure to achieve decreases in these costs and expenses relative to decreases in the prices we can charge for our services and products;
- inability to maintain our prices relative to our costs;
- failure of our current and planned services and software to operate as expected;
- loss of any significant customers or loss of existing customers at a rate greater than our increase in new customers or our sales to existing customers;
- failure to increase sales of our services to current customers as a result of their ability to reduce their monthly usage of our services to their minimum monthly contractual commitment;
- failure of a significant number of customers to pay our fees on a timely basis or at all or failure to continue to purchase our services in accordance with their contractual commitments; and
- inability to attract high-quality customers to purchase and implement our current and planned services.

If we are unable to develop new services and enhancements to existing services or fail to predict and respond to emerging technological trends and customers changing needs, our operating results may suffer.

The market for our CDN services is characterized by rapidly changing technology, evolving industry standards and new product and service introductions. Our operating results depend on our ability to develop and introduce new services into existing and emerging markets. The process of developing new technologies is complex and uncertain. We must commit significant resources to developing new services or enhancements to our existing services before knowing whether our investments will result in services the market will accept. Furthermore, we may not execute successfully our technology initiatives because of errors in planning or timing, technical hurdles that we fail to overcome in a timely fashion, misunderstandings about market demand or a lack of appropriate resources. As prices for CDN continue to fall, we will increasingly rely on new product offerings and other value added services to maintain or increase our gross margins. Failures in execution or market acceptance of new services we introduce could result in competitors providing those solutions before we do, which could lead to loss of market share, revenue and earnings.

We depend on a limited number of customers for a substantial portion of our revenue in any fiscal period, and the loss of, or a significant shortfall in demand from these customers could significantly harm our results of operations.

During any given fiscal period, a relatively small number of customers typically account for a significant percentage of our revenue. For example, in 2008, sales to our top 10 customers, in terms of revenue, accounted for approximately 38% of our total revenue. For the nine month period ended September 30, 2009, sales to our top 10 customers, in terms of revenue, accounted for approximately 37% of our total revenue. During 2008 one of these top 10 customers, Microsoft, represented approximately 15% of our total revenue for that period. For the nine month period ended September 30, 2009, Microsoft, represented approximately 16% of our total revenue. In the past, the customers that comprised our top 10 customers have continually changed, and we also have experienced significant fluctuations in our individual customers usage of our services. As a consequence, we may not be able to adjust our expenses in the short term to address the unanticipated loss of a large customer during any particular period. As such, we may experience significant, unanticipated fluctuations in our operating results which may cause us to not meet our expectations or those of stock market analysts, which could cause our stock price to decline.

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If we are unable to attract new customers or to retain our existing customers, our revenue could be lower than expected and our operating results may suffer.

In addition to adding new customers, to increase our revenue, we must sell additional services to existing customers and encourage existing customers to increase their usage levels. If our existing and prospective customers do not perceive our services to be of sufficiently high value and quality, we may not be able to retain our current customers or attract new customers. We sell our services pursuant to service agreements that generally include some form of financial minimum commitment. Our customers have no obligation to renew their contracts for our services after the expiration of their initial commitment, and these service agreements may not be renewed at the same or higher level of service, if at all. Moreover, under some circumstances, some of our customers have the right to cancel their service agreements prior to the expiration of the terms of their agreements. This fact, in addition to the changing competitive landscape in our market, means that we cannot accurately predict future customer renewal rates or usage rates. Our customers renewal rates may decline or fluctuate as a result of a number of factors, including:

- their satisfaction or dissatisfaction with our services;
- the prices of our services;
- the prices of services offered by our competitors;
- discontinuation by our customers of their internet or web-based content distribution business;
- mergers and acquisitions affecting our customer base; and
- reductions in our customers spending levels.

If our customers do not renew their service agreements with us or if they renew on less favorable terms, our revenue may decline and our business will suffer. Similarly, our customer agreements often provide for minimum commitments that are often significantly below our customers historical usage levels. Consequently, even if we have agreements with our customers to use our services, these customers could significantly curtail their usage without incurring any penalties under our agreements. In this event, our revenue would be lower than expected and our operating results could suffer.

It also is an important component of our growth strategy to market our CDN services to industries, such as enterprise and the government. As an organization, we do not have significant experience in selling our services into these markets. We have only recently begun a number of these initiatives, and our ability to successfully sell our services into these markets to a meaningful extent remains unproven. If we are unsuccessful in such efforts, our business, financial condition and results of operations could suffer.

Our results of operations may fluctuate in the future. As a result, we may fail to meet or exceed the expectations of securities analysts or investors, which could cause our stock price to decline.

Our results of operations may fluctuate as a result of a variety of factors, many of which are outside of our control. If our results of operations fall below the expectations of securities analysts or investors, the price of our common stock could decline substantially. In addition to the effects of other risks discussed in this section, fluctuations in our results of operations may be due to a number of factors, including:

- our ability to increase sales to existing customers and attract new customers to our CDN services;

the addition or loss of large customers, or significant variation in their use of our CDN services;

costs associated with current or future intellectual property lawsuits and other lawsuits;

service outages or security breaches;

the amount and timing of operating costs and capital expenditures related to the maintenance and expansion of our business, operations and infrastructure;

the timing and success of new product and service introductions by us or our competitors;

the occurrence of significant events in a particular period that result in an increase in the use of our CDN services, such as a major media event or a customer s online release of a new or updated video game;

changes in our pricing policies or those of our competitors;

the timing of recognizing revenue;

limitations of the capacity of our content delivery network and related systems;

the timing of costs related to the development or acquisition of technologies, services or businesses;

general economic, industry and market conditions (such as the fluctuations experienced in the stock and credit markets during the recent deterioration of global economic conditions) and those conditions specific to Internet usage;

limitations on usage imposed by our customers in order to limit their online expenses; and geopolitical events such as war, threat of war or terrorist actions.

We believe that our revenue and results of operations may vary significantly in the future and that period-to-period comparisons of our operating results may not be meaningful. You should not rely on the results of one period as an indication of future performance.

After being profitable in 2004 and 2005, we were unprofitable in 2006, 2007 and 2008 primarily due to increased stock-based compensation expense and litigation costs, which could affect our ability to achieve and maintain profitability in the future.

Our adoption of ASC 718 (formerly FAS 123R) in 2006 substantially increased the amount of share-based compensation expense we record and has had a significant impact on our results of operations. After being profitable in 2004 and 2005, we were unprofitable in 2006, 2007 and 2008 partially due to an increase in our share-based compensation expense which increased from $0.1 million in 2005 to $9.2 million, $18.9 million and $18.1 million, respectively, in 2006, 2007 and 2008. For the nine month period ended September 30, 2009 our share-based compensation expense was $13.1 million. This increase in share-based compensation expense reflects an increase in the level of stock options, restricted stock and restricted stock units (RSUs) grants. Our unrecognized share-based compensation expense totaled $30.6 million at September 30, 2009, of which we expect to amortize $4.4 million during the remainder of 2009, $14.4 million in 2010 and the remainder thereafter based upon the scheduled vesting of the options, restricted stock and RSUs outstanding at that time. We further expect our share-based compensation expense to decrease in 2009 from 2007 and 2008 levels, and potentially to increase thereafter as we grant additional options or restricted stock awards. The increased share-based compensation expense could adversely affect our ability to achieve and maintain profitability in the future. In 2006, we were sued by Akamai and MIT alleging infringement of certain patents. In December 2007, we were sued by Level 3 Communications alleging infringement of certain patents. We have incurred, and will continue to incur, significant costs associated with litigation. These costs were $3.1 million, $7.3 million and $20.8 million, respectively, in 2006, 2007 and 2008, respectively. For the nine month period ended September 30, 2009, we incurred $4.6 million in litigation costs. We expect these costs will continue to be significant during 2009.

We generate our revenue almost entirely from the sale of CDN services, and the failure of the market for these services to expand as we expect or the reduction in spending on those services by our current or potential customers would seriously harm our business.

While we offer our customers a number of services associated with our CDN, we generated the majority of our revenue in 2006, 2007, 2008 and year to date in 2009, from charging our customers for the content delivered on their behalf through our CDN. As we do not currently have other meaningful sources of revenue, we are subject to an elevated risk of reduced demand for these services. Furthermore, if the market for delivery of rich media content in particular does not continue to grow as we expect or grows more slowly, then we may fail to achieve a return on the significant investment we are making to prepare for this growth. Our success, therefore, depends on the continued and increasing reliance on the Internet for delivery of media content and our ability to cost-effectively deliver these services. Factors that may have a general tendency to limit or reduce the number of users relying on the Internet for media content or the number of providers making this content available online include a general decline in Internet usage, litigation involving our customers and third-party restrictions on online content, including copyright restrictions, digital rights management and restrictions in certain geographic regions, as well as a significant increase in the quality or fidelity of offline media content beyond that available online to the point where users prefer the offline experience. The influence of any of these factors may cause our current or potential customers to reduce their spending on CDN services, which would seriously harm our operating results and financial condition.

Many of our significant current and potential customers are pursuing emerging or unproven business models which, if unsuccessful, could lead to a substantial decline in demand for our CDN services.

Because the proliferation of broadband Internet connections and the subsequent monetization of content libraries for distribution to Internet users are relatively recent phenomena, many of our customers business models that center on the delivery of rich media and other content to users remain unproven. For example, social media companies have been among our top recent customers and are pursuing emerging strategies for monetizing the user content and traffic on their web sites. Our customers will not continue to purchase our CDN services if their investment in providing access to the media stored on or deliverable through our CDN does not generate a sufficient return on their investment. A reduction in spending on CDN services by our current or potential customers would seriously harm our operating results and financial condition.

Our business will be adversely affected if we are unable to protect our intellectual property rights from unauthorized use or infringement by third parties.

We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. These legal protections afford only limited protection, and we have only one currently issued patent. Monitoring infringement of our intellectual property rights is difficult, and we cannot be certain that the steps we have taken will

prevent unauthorized use of our intellectual property rights. We have applied for patent protection in a number of foreign countries, but the laws in these jurisdictions may not protect our proprietary rights as fully as in the United States. Furthermore, we cannot be certain that any pending or future patent applications will be granted, that any future patent will not be challenged, invalidated or circumvented, or that rights granted under any patent that may be issued will provide competitive advantages to us.

Any unplanned interruption in the functioning of our network or services could lead to significant costs and disruptions that could reduce our revenue and harm our business, financial results and reputation.

Our business is dependent on providing our customers with fast, efficient and reliable distribution of application and content delivery services over the Internet. Many of our customers depend primarily or exclusively on our services to operate their businesses. Consequently, any disruption of our services could have a material impact on our customers businesses. Our network or services could be disrupted by numerous events, including natural disasters, failure or refusal of our third-party network providers to provide the necessary capacity, failure of our software or CDN delivery infrastructure and power losses. In addition, we deploy our servers in approximately 72 third-party co-location facilities, and these third-party co-location providers could experience system outages or other disruptions that could constrain our ability to deliver our services. We may also experience disruptions caused by software viruses or other attacks by unauthorized users.

While we have not experienced any significant, unplanned disruption of our services to date, our CDN may fail in the future. Despite our significant infrastructure investments, we may have insufficient communications and server capacity to address these or other disruptions, which could result in interruptions in our services. Any widespread interruption of the functioning of our CDN and related services for any reason would reduce our revenue and could harm our business and financial results. If such a widespread interruption occurred or if we failed to deliver content to users as expected during a high-profile media event, game release or other well-publicized circumstance, our reputation could be damaged severely. Moreover, any disruptions could undermine confidence in our services and cause us to lose customers or make it more difficult to attract new ones, either of which could harm our business and results of operations.

We may have difficulty scaling and adapting our existing architecture to accommodate increased traffic and technology advances or changing business requirements, which could lead to the loss of customers and cause us to incur unexpected expenses to make network improvements.

Our CDN services are highly complex and are designed to be deployed in and across numerous large and complex networks. Our network infrastructure has to perform well and be reliable for us to be successful. The greater the user traffic and the greater the complexity of our products and services, the more resources we will need to invest in additional infrastructure and support. Further, as a result of the adverse jury verdict in February 2008 in the Akamai Technologies, Inc. v. Limelight Networks, Inc. lawsuit, which verdict was overturned by the Court s April 24, 2009 order granting our motion for judgment as a matter of law, we made significant investment in designing and implementing changes to our CDN architecture in order to implement our CDN services in a manner we believe does not infringe the claims of Akamai s 703 patent as alleged in the February 2008 trial. We have spent and expect to continue to spend substantial amounts on the purchase and lease of equipment and data centers and the upgrade of our technology and network infrastructure to handle increased traffic over our network, implement changes to our CDN architecture and to roll out new products and services. This expansion is expensive and complex and could result in inefficiencies, operational failures or defects in our network and related software. If we do not implement such changes or expand successfully, or if we experience inefficiencies and operational failures, the quality of our products and services and user experience could decline. From time to time, we have needed to correct errors and defects in our software or in other aspects of our CDN. In the future, there may be additional errors and defects that may harm our ability to deliver our services, including errors and defects originating with third party networks or software on which we rely. These occurrences could damage our reputation and lead us to lose current and potential customers. We must continuously upgrade our infrastructure in order to keep pace with our customers evolving demands. Cost increases or the failure to accommodate increased traffic or these evolving business demands without disruption could harm our operating results and financial condition.

Our operations are dependent in part upon communications capacity provided by third-party telecommunications providers. A material disruption of the communications capacity we have leased could harm our results of operations, reputation and customer relations.

We lease private line capacity for our backbone from a third party provider, Global Crossing Ltd. Our contracts for private line capacity with Global Crossing generally have terms of three to four years. In January and September 2009, we amended our agreement with Global Crossing to enhance the private line capacity for our backbone. The communications capacity we have leased may become unavailable for a variety of reasons, such as physical interruption, technical difficulties, contractual disputes, or the financial health of our third party provider. As it would be time consuming and expensive to identify and obtain alternative third-party connectivity, we are dependent on Global Crossing in the near term. Financial failure of Global Crossing could jeopardize utilization of the service fees pre-paid by us under our agreement with Global Crossing. Additionally, as we grow, we anticipate requiring greater private line capacity than we currently have in place. If we are unable to obtain such capacity on terms commercially acceptable to us or at all, our business and financial results would suffer. We may not be able to deploy on a timely basis enough network capacity to meet the needs of our customer base or effectively manage demand for our services.

Our business depends on continued and unimpeded access to third-party controlled end-user access networks.

Our content delivery services depend on our ability to access certain end-user access networks in order to complete the delivery of rich media and other online content to end-users. Some operators of these networks may take measures, such as the deployment of a variety of filters, that could degrade, disrupt or increase the cost of our or our customers access to certain of these end-user access networks by restricting or prohibiting the use of their networks to support or facilitate our services, or by charging increased fees to us, our customers or end-users in connection with our services. This or other types of interference could result in a loss of existing customers, increased costs and impairment of our ability to attract new customers, thereby harming our revenue and growth.

In addition, the performance of our infrastructure depends in part on the direct connection of our CDN to a large number of end-user access networks, known as peering, which we achieve through mutually beneficial cooperation with these networks. If in the future a significant percentage of these network operators elected to no longer peer with our CDN, the performance of our infrastructure could be diminished and our business could suffer.

If our ability to deliver media files in popular proprietary content formats was restricted or became cost-prohibitive, demand for our content delivery services could decline, we could lose customers and our financial results could suffer.

Our business depends on our ability to deliver media content in all major formats. If our legal right or technical ability to store and deliver content in one or more popular proprietary content formats, such as Adobe Flash or Windows Media, was limited, our ability to serve our customers in these formats would be impaired and the demand for our content delivery services would decline by customers using these formats. Owners of propriety content formats may be able to block, restrict or impose fees or other costs on our use of such formats, which could lead to additional expenses for us and for our customers, or which could prevent our delivery of this type of content altogether. Such interference could result in a loss of existing customers, increased costs and impairment of our ability to attract new customers, which would harm our revenue, operating results and growth.

As part of our business strategy, we may acquire businesses or technologies and may have difficulty integrating these operations.

We may seek to acquire businesses or technologies that are complementary to our business. For example, in May 2009 we acquired substantially all of the assets of Kiptronic Inc., a developer of mobility and monetization solutions for content publishers. Acquisitions involve a number of risks to our business, including the difficulty of integrating the operations and personnel of the acquired companies, the potential disruption of our ongoing business, the potential distraction of management, expenses related to the acquisition and potential unknown liabilities associated with acquired businesses. Any inability to integrate operations or personnel in an efficient and timely manner could harm our results of operations. We have little prior experience as a company in this complex process of acquiring and integrating businesses. If we are not successful in completing acquisitions that we may pursue in the future, we may be required to reevaluate our business strategy, and we may incur substantial expenses and devote significant management time and resources without a productive result. In addition, future acquisitions will require the use of our available cash or dilutive issuances of securities. Future acquisitions or attempted acquisitions could also harm our ability to achieve profitability. We may also experience significant turnover from the acquired operations or from our current operations as we integrate businesses.

If we are unable to retain our key employees and hire qualified sales and technical personnel, our ability to compete could be harmed.

Our future success depends upon the continued services of our executive officers and other key technology, sales, marketing and support personnel who have critical industry experience and relationships that they rely on in implementing our business plan. In particular, we are dependent on the services of our Chief Executive Officer, Jeffrey W. Lunsford and also our Chief Technical Officer, Nathan F. Raciborski. Neither of these officers nor any of our other key employees is bound by an employment agreement for any specific term. There is increasing competition for talented individuals with the specialized knowledge to deliver content delivery services and this competition affects both our ability to retain key employees and hire new ones. The loss of the services of any of our key employees could disrupt our operations, delay the development and introduction of our services, and negatively impact our ability to sell our services.

We face risks associated with international operations that could harm our business.

We have operations, equipment and personnel in the United States, France, Germany, the Netherlands, Japan, Singapore and the United Kingdom, and we currently maintain network equipment in Australia, Canada, Hong Kong, Ireland, South Korea, Sweden, Italy and Spain. As part of our growth strategy, we intend to expand our sales and support organizations internationally, as well as to further expand our international network infrastructure. We have limited experience in providing our services internationally and such expansion could require us to make significant expenditures, including the hiring of local employees, in advance of generating any revenue. As a consequence, we may fail to achieve profitable operations that will compensate our investment in international locations. We are subject to a number of risks associated with international business activities that may increase our costs, lengthen our sales cycle and require significant management attention.

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These risks include:

- increased expenses associated with sales and marketing, deploying services and maintaining our infrastructure in foreign countries;
- competition from local content delivery service providers, many of which are very well positioned within their local markets;
- unexpected changes in regulatory requirements preventing us from operating our CDN or resulting in unanticipated costs and delays;
- interpretations of laws or regulations that would subject us to regulatory supervision or, in the alternative, require us to exit a country, which could have a negative impact on the quality of our services or our results of operations;
- longer accounts receivable payment cycles and difficulties in collecting accounts receivable;
- corporate and personal liability for violations of local laws and regulations;
- currency exchange rate fluctuations; and
- potentially adverse tax consequences.

Internet-related and other laws relating to taxation issues, privacy and consumer protection and liability for content distributed over our network, could harm our business.

Laws and regulations that apply to communications and commerce conducted over the Internet are becoming more prevalent, both in the United States and internationally, and may impose additional burdens on companies conducting business online or providing Internet-related services such as ours. Increased regulation could negatively affect our business directly, as well as the businesses of our customers, which could reduce their demand for our services. For example, tax authorities abroad may impose taxes on the Internet-related revenue we generate based on where our internationally deployed servers are located. In addition, domestic and international taxation laws are subject to change. Our services, or the businesses of our customers, may become subject to increased taxation, which could harm our financial results either directly or by forcing our customers to scale back their operations and use of our services in order to maintain their operations. In addition, the laws relating to the liability of private network operators for information carried on or disseminated through their networks are unsettled, both in the United States and abroad. Network operators have been sued in the past, sometimes successfully, based on the content of material disseminated through their networks. We may become subject to legal claims such as defamation, invasion of privacy and copyright infringement in connection with content stored on or distributed through our network. In addition, our reputation could suffer as a result of our perceived association with the type of content that some of our customers deliver. If we need to take costly measures to reduce our exposure to these risks, or are required to defend ourselves against such claims, our financial results could be negatively affected.

If we are required to seek additional funding, such funding may not be available on acceptable terms or at all.

We may need to obtain additional funding due to a number of factors beyond our control, including a shortfall in revenue, increased expenses, final adverse judgments in litigation matters, increased investment in capital equipment or the acquisition of significant businesses or technologies. We believe that our cash, plus cash from operations will be sufficient to fund our operations and proposed capital expenditures for at least the next 12 months. However, we may need funding before such time. If we do need to obtain funding, it may not be available on commercially reasonable terms or at all. If we are unable to obtain sufficient funding, our business would be harmed. Even if we were able to find outside funding sources, we might be required to issue securities in a transaction that could be highly dilutive to our investors or we may be required to issue securities with greater rights than the securities we have outstanding today. We might also be required to take other actions that could lessen the value of our common stock, including borrowing money on terms that are not favorable to us. If we are unable to generate or raise capital that is sufficient to fund our operations, we may be required to curtail operations, reduce our capabilities or cease operations in certain jurisdictions or completely.

Our business requires the continued development of effective business support systems to support our customer growth and related services.

The growth of our business depends on our ability to continue to develop effective business support systems. This is a complicated undertaking requiring significant resources and expertise. Business support systems are needed for:

- implementing customer orders for services;
- delivering these services; and
- timely billing for these services.

Because our business plan provides for continued growth in the number of customers that we serve and services offered, there is a need to continue to develop our business support systems on a schedule sufficient to meet proposed service rollout dates. The failure to continue to develop effective business support systems could harm our ability to implement our business plans and meet our financial goals and objectives.

Changes in financial accounting standards or practices may cause adverse, unexpected financial reporting fluctuations and affect our reported results of operations.

A change in accounting standards or practices can have a significant effect on our operating results and may affect our reporting of transactions completed before the change is effective. New accounting pronouncements and varying interpretations of existing accounting pronouncements have occurred and may occur in the future. Changes to existing rules or the questioning of current practices may adversely affect our reported financial results or the way we conduct our business. For example, our adoption of ASC 718 (formerly FAS123R) in 2006 has increased the amount of stock-based compensation expense we record. This, in turn, has impacted our results of operations for the periods since this adoption and has made it more difficult to evaluate our recent financial results relative to prior periods.

We have incurred, and will continue to incur significantly increased costs as a result of operating as a public company, and our management is required to devote substantial time to compliance initiatives.

As a public company, we have incurred, and will continue to incur, significant accounting and other expenses that we did not incur as a private company. These expenses include increased accounting, legal and other professional fees, insurance premiums, investor relations costs, and costs associated with compensating our independent directors. In addition, the Sarbanes-Oxley Act of 2002, as well as rules subsequently implemented by the Securities and Exchange Commission and the Nasdaq Global Market, imposes additional requirements on public companies, including requiring changes in corporate governance practices. For example, the listing requirements of the Nasdaq Global Market require that we satisfy certain corporate governance requirements relating to independent directors, audit committees, distribution of annual and interim reports, stockholder meetings, stockholder approvals, solicitation of proxies, conflicts of interest, stockholder voting rights and codes of conduct. Our management and other personnel need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations have increased our legal and financial compliance costs and make some activities more time-consuming and costly. For example, these rules and regulations make it more difficult and more expensive for us to obtain director and officer liability insurance. These rules and regulations could also make it more difficult for us to identify and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

Failure to effectively expand our sales and marketing capabilities could harm our ability to increase our customer base and achieve broader market acceptance of our services.

Increasing our customer base and achieving broader market acceptance of our services will depend to a significant extent on our ability to expand our sales and marketing operations. Historically, we have concentrated our sales force at our headquarters in Tempe, Arizona. However, we have recently begun building a field sales force to augment our sales efforts and to bring our sales personnel closer to our current and potential customers. Developing such a field sales force has been and will continue to be expensive and we have limited knowledge in developing and operating a widely dispersed sales force. As a result, we may not be successful in developing an effective sales force, which could cause our results of operations to suffer.

We believe that there is significant competition for both inside and direct sales personnel with the sales skills and technical knowledge that we require. Our ability to achieve significant growth in revenue in the future will depend, in large part, on our success in recruiting, training and retaining sufficient numbers of inside and direct sales personnel. We have expanded our sales and marketing personnel from a total of 13 at December 31, 2004 to 140 at December 31, 2008. As of September 30, 2009, we had 138 sales and marketing personnel. New hires require significant training and, in most cases, take a significant period of time before they achieve full productivity. Our recent hires and planned hires may not become as productive as we would like, and we may be unable to hire or retain sufficient numbers of qualified individuals in the future in the markets where we do business. Our business will be seriously harmed if these expansion efforts do not generate a corresponding significant increase in revenue.

If the estimates we make, and the assumptions on which we rely, in preparing our financial statements prove inaccurate, our actual results may be adversely affected.

Our financial statements have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments about, among other things, taxes, revenue recognition, share-based compensation costs, contingent obligations and doubtful accounts. These estimates and judgments affect the reported amounts of our assets, liabilities, revenue and expenses, the amounts of charges accrued by us, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances and at the time they are made. If our estimates or the assumptions underlying them are not correct, we may need to accrue additional charges or reduce the value of assets that could adversely affect our results of operations, investors may lose confidence in our ability to manage our business and our stock price could decline.

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Risks Related to Ownership of Our Common Stock

The trading price of our common stock has been, and is likely to continue to be, volatile.

The trading prices of our common stock and the securities of technology companies generally have been highly volatile. Factors affecting the trading price of our common stock will include:

- variations in our operating results;
- announcements of technological innovations, new services or service enhancements, strategic alliances or significant agreements by us or by our competitors;
- commencement or resolution of, our involvement in and uncertainties arising from, litigation, particularly our current litigation with Akamai and MIT, Level 3 Communications, and our Securities Litigation matter;
- recruitment or departure of key personnel;
- changes in the estimates of our operating results or changes in recommendations by any securities analysts that elect to follow our common stock;
- developments or disputes concerning our intellectual property or other proprietary rights;
- the gain or loss of significant customers;
- market conditions in our industry, the industries of our customers and the economy as a whole; and
- adoption or modification of regulations, policies, procedures or programs applicable to our business.

In addition, if the market for technology stocks or the stock market in general experiences loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us.

If securities or industry analysts do not publish research or reports about our business or if they issue an adverse or misleading opinion or report, our stock, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. If any of the analysts who cover us issue an adverse or misleading opinion regarding our stock, our stock price would likely decline. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

Insiders have substantial control over us and will be able to influence corporate matters.

As of September 30, 2009, our directors and executive officers and their affiliates beneficially owned, in the aggregate, approximately 52% of our outstanding common stock, including approximately 36% beneficially owned by investment entities affiliated with Goldman, Sachs & Co.

As a result, these stockholders will be able to exercise significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, such as a merger or other sale of our company or its assets. This concentration of ownership could limit other stockholders ability to influence corporate matters and may have the effect of delaying or preventing a third party from acquiring control over us.

Anti-takeover provisions in our charter documents and Delaware law could discourage, delay or prevent a change in control of our company and may affect the trading price of our common stock.

We are a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change in control would be beneficial to our existing stockholders. In addition, our certificate of incorporation and bylaws may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. Our certificate of incorporation and bylaws:

- authorize the issuance of blank check preferred stock that could be issued by our board of directors to thwart a takeover attempt;
- provide for a classified board of directors, as a result of which the successors to the directors whose terms have expired will be elected to serve from the time of election and qualification until the third annual meeting following their election;
- require that directors only be removed from office for cause and only upon a majority stockholder vote;
- provide that vacancies on the board of directors, including newly created directorships, may be filled only by a majority vote of directors then in office;
- limit who may call special meetings of stockholders;

- prohibit stockholder action by written consent, requiring all actions to be taken at a meeting of the stockholders; and

- require supermajority stockholder voting to effect certain amendments to our certificate of incorporation and bylaws.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

On June 7, 2007, our registration statement on Form S-1 (No. 333-141516) was declared effective in connection with our initial public offering. The offering closed on June 13, 2007, and, as a result, we received net proceeds of approximately $203.9 million after underwriters discounts and commissions of approximately $15.6 million and additional offering-related costs of approximately $4.0 million.

In June 2007, we used $23.8 million of the net proceeds to repay the outstanding balance of our credit facility with Silicon Valley Bank. We expect to use the remaining net proceeds for capital expenditures, working capital and other general corporate purposes. For the nine month period ended September 30, 2009, we made capital expenditures of $19.8 million and expect aggregate capital expenditures of approximately 18% to 19% of total revenue in 2009. We may also use a portion of our net proceeds to fund acquisitions of complementary businesses, products or technologies. However, we do not have agreements or commitments for any specific acquisitions at this time. Pending the uses described above, we intend to invest the net proceeds in a variety of short-term, interest-bearing, investment grade securities. Depending upon the final outcome of pending litigation a portion of the net proceeds may be used to satisfy a final damages judgment, if any.

ITEM 3. DEFAULT UPON SENIOR SECURITIES

Not applicable

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

Not applicable

ITEM 5. OTHER INFORMATION

On September 30, 2009, we amended the Bandwidth/Capacity Agreement with Global Crossing Telecommunications, Inc. (Global Crossing) dated August 29, 2001. We purchase certain telecommunications transport services, including dedicated circuit and port capacity, from Global Crossing for the transport of our telecommunications or other traffic. Under the amendment we accelerated to September 30, 2009 a payment we were otherwise obligated to pay to Global Crossing at a later time, which payment was discounted to take into account the time-value of the payment, and also paid to Global Crossing a substantial pre-payment for IP transit usage to be consumed by us over an extended period. The amendment also provides that Global Crossing will provide certain additional ports in locations to be mutually agreed on by Global Crossing and us.

ITEM 6. EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference Form	File No.	Exhibit	Filing Date	Provided Herewith
3.1	Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.	S-1	333-141516	3.2	5/21/07	
3.2	Amended and Restated Bylaws of the Registrant, as currently in effect.	S-1	333-141516	3.4	3/22/07	
10.10.03						X

	Amendment #24 to Bandwidth/Capacity Agreement between the Registrant and Global Crossing Bandwidth, Inc., dated August 29, 2001, as amended.	
31.01	Certification of Principal Executive Officer Pursuant to Securities Exchange Act Rule 13a-14(a).	X
31.02	Certification of Principal Financial Officer Pursuant to Securities Exchange Act Rule 13a-14(a).	X
32.01	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).*	X
32.02	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).*	X

* This certification is not deemed filed for purposes of Section 18 of the Securities Exchange Act, or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities

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Act of 1933 or the Securities Exchange Act of 1934, except to the extent that Limelight Networks, Inc. specifically incorporates it by reference.

Confidential treatment has been requested or granted for portions of this exhibit by the Securities and Exchange Commission.

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SIGNATURES

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

LIMELIGHT NETWORKS, INC.

Date: November 6, 2009

By: /s/ Douglas S. Lindroth
Douglas S. Lindroth

Senior Vice President, Chief Financial Officer and Treasurer

(Principal Financial Officer and Principal Accounting Officer)

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EXHIBIT INDEX

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