Evoke Pharma Inc
Form 4
April 24, 2015

FORM 4

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL

OMB Number:	3235-0287
Expires:	January 31, 2005
Estimated average burden hours per response...	0.5

(Print or Type Responses)

1. Name and Address of Reporting Person *
WIDDER KENNETH J

(Last) (First) (Middle)

C/O EVOKE PHARMA, INC., 505 LOMAS SANTA FE DRIVE, SUITE 270

(Street)

SOLANA BEACH, CA 92075

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
Evoke Pharma Inc [EVOK]

3. Date of Earliest Transaction (Month/Day/Year)
04/22/2015

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

__X__ Director __X__ 10% Owner
_____ Officer (give title below) _____ Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative	2. Conversion	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if	4. Transaction	5. Number of Derivative	6. Date Exercisable and Expiration Date	7. Title and Amount of Underlying Securities	8. P Der

Security (Instr. 3)	or Exercise Price of Derivative Security		any (Month/Day/Year)	Code (Instr. 8)		Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		(Month/Day/Year)		(Instr. 3 and 4)		Sec (Ins
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares	
Stock Option (Right to Buy)	$ 6.43	04/22/2015		A		9,000		(1)	04/21/2025	Common Stock	9,000	

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
WIDDER KENNETH J C/O EVOKE PHARMA, INC. 505 LOMAS SANTA FE DRIVE, SUITE 270 SOLANA BEACH, CA 92075	X	X		

Signatures

/s/ Matthew J. D'Onofrio, Attorney-in-fact for Kenneth J. Widder	04/24/2015
**Signature of Reporting Person	Date

Explanation of Responses:

* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) The total number of shares of common stock subject to the option vests on the one-year anniversary of the date of grant (4/22/2016), subject to the reporting person's continued service to the Issuer through such vesting date.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.
Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. n a timely manner, we may be delayed or prevented from commercializing our products and services. Because our relationships with these parties are non- exclusive, they may also support products and services that compete directly with us, or offer similar or greater support to our competitors. Any of these events could require us to undertake unforeseen additional responsibilities or devote additional resources to commercialize our products and services. This outcome would harm our ability to compete effectively and quickly achieve market acceptance and brand recognition. In addition, we face the following risks in relying on these third parties: If our manufacturing partnerships are not successful, we may be unable to establish a market for our products and services. We initially manufactured the personal video recorders that enable the TiVo Service through a third-party contract manufacturer. We have entered into agreements with Philips, Sony, Hughes and Thomson UK to manufacture and distribute the personal video recorders that enable the TiVo Service. However, we have no minimum volume commitments from Philips, Sony, Hughes, Thomson UK or any other manufacturer. The ability of our manufacturing partners to reach sufficient production volume of the personal video recorder to satisfy anticipated demand is subject to delays and

unforeseen problems such as defects, shortages of critical components and cost overruns. Moreover, they will require substantial lead times to manufacture anticipated quantities of the personal video recorders that enable the TiVo Service. Delays and other problems could impair the retail distribution and brand image and make it difficult for us to attract subscribers. In addition, the loss of a manufacturing partner would require us to identify and contract with alternative sources of manufacturing, which we may be unable to do and which could prove time-consuming and expensive. Although we expect to continue to contract with additional consumer electronics companies for the manufacture of personal video recorders in the future, we may be unable to establish additional relationships on acceptable terms. If our corporate partners fail to perform their obligations, we may be unable to effectively market and distribute our products and services. Our manufacturing partners distribute the personal video recorder that enables the TiVo Service. We rely on their sales forces, marketing budgets and brand images to promote and support the personal video recorder and the TiVo Service. We expect to continue to rely on our manufacturing partners and other strategic partners to promote and support the personal video recorder and other devices that enable the TiVo Service. The loss of one or more of these partners could require us to undertake more of these activities on our own. As a result, we would spend significant resources to support personal video recorders and other devices that enable the TiVo Service. We also expect to rely on AOL, DIRECTV and other partners to provide marketing support for the TiVo Service. The failure of one or more of these partners to provide anticipated marketing support will require us to divert more of our limited resources to marketing the TiVo Service. If we are unable to provide adequate marketing support for the personal video recorder and the TiVo Service, our ability to attract subscribers to the TiVo Service will be limited. We are dependent on single suppliers for several key components and services. If these suppliers fail to perform their obligations, we may be unable to find alternative suppliers or deliver our products and services to our customers on time. We currently rely on sole suppliers for a number of the key components and services used in the personal video recorders and the TiVo Service. For example: . Quantum is the sole supplier of the hard disk drives; . NEC is the sole supplier of the application specific integrated circuit, a semiconductor device; . Sony is the sole supplier of the MPEG2 encoder semiconductor device; and . Tribune Media Services is the sole supplier of program guide data. In addition to the above, we have several sole suppliers for key components of our products currently under development. 34 We cannot be sure that alternative sources for key components and services used in the personal video recorders and the TiVo Service will be available when needed or, if available, that these components and services will be available on favorable terms. If our agreements or our manufacturing partners' agreements with Quantum, NEC, Sony or Tribune Media Services were to terminate or expire, or if we or our manufacturing partners were unable to obtain sufficient quantities of these components or required program guide data, our search for alternate suppliers could result in significant delays, added expense or disruption in product availability. Our ability to generate revenues from subscription fees is unproven and may fail. We expect to generate a substantial portion of our revenues from subscription fees for the TiVo Service. Many of our potential customers already pay monthly fees for cable or satellite television services. We must convince these consumers to pay an additional subscription fee to receive the TiVo Service. The availability of competing services that do not require subscription fees will harm our ability to effectively attract subscribers. In addition, the personal video recorder that enables the TiVo Service can be used to record programs and pause, rewind and fast forward through live or recorded shows without an active subscription to the TiVo Service. If a significant number of purchasers of the personal video recorders use these devices without subscribing to the TiVo Service, our revenue growth will decline and we may not achieve profitability. Our business is expanding rapidly and our failure to manage growth could disrupt our business and impair our ability to generate revenues. Since we began our business in August 1997, we have significantly expanded our operations. We anticipate continued expansion in our headcount and infrastructure to support potential growth in our subscriber base and to allow us to pursue market opportunities. This expansion has placed, and will continue to place, a significant strain on our management, operational and financial resources and systems. Specific risks we face as our business expands include: We need to attract and retain qualified personnel, and any failure to do so may impair our ability to offer new products or grow our business. Our success will depend on our ability to attract, retain and motivate managerial, technical, marketing, financial, administrative and customer support personnel. Competition for such employees is intense, especially for engineers in the San Francisco Bay Area, and we may be unable to successfully attract, integrate or retain sufficiently qualified personnel. If we are unable to hire, train, retain and manage required personnel, we may be unable to successfully introduce new products or otherwise implement our business strategy. Any inability of our systems to accommodate our expected subscriber growth may cause service interruptions or delay our introduction of new services. We internally developed many of the systems we use to provide the TiVo Service and perform other processing functions. The ability of these systems to scale as we rapidly add new subscribers is unproven. We must continually improve these systems to accommodate subscriber growth and add features and functionality to the TiVo Service. Our inability to add software and hardware or to upgrade our technology, systems or network infrastructure could adversely affect our business, cause service interruptions or delay the introduction of new services. We will need to provide acceptable customer support, and any inability to do so will harm our brand and ability to generate and retain new subscribers. Our ability to increase sales, retain current and future subscribers and strengthen our brand will depend in part upon the quality of our customer support operations. Some customers require significant support when installing the personal video recorder and becoming acquainted with the features and functionality of the TiVo Service. We have limited experience with widespread deployment of our products and services to a diverse customer base, and we may not have adequate personnel to provide the levels of support that our customers require. In addition, we have entered into agreements with third parties to provide this support and will rely on them for a substantial portion of our customer support functions. Our failure to provide adequate customer support for the TiVo Service and personal video recorder will damage our reputation in the personal television and consumer electronics marketplace and strain our relationships with customers and strategic partners. This could prevent us from gaining new or retaining existing subscribers and could cause harm to our reputation and brand. We will need to improve our operational and financial systems to support our expected growth, and any inability to do so will adversely impact our billing and reporting. To manage the expected growth of our operations and personnel, we will need to improve our operational and financial systems, procedures and controls. Our current and planned systems, procedures and controls may not be adequate to support our future operations and expected growth. For example, we replaced our accounting and billing system at the beginning of August 2000. 35 Delays or problems associated with any improvement or expansion of our operational and financial systems and controls could adversely impact our relationships with subscribers and cause harm to our reputation and brand. Delays or problems associated with any improvement or expansion of our operational and financial systems and controls could also result in errors in our financial and other reporting. If we are unable to create multiple revenue streams, we may not be able to cover our expenses or meet our obligations to strategic partners and other third parties. Although our initial success will depend on building a significant customer base and generating subscription fees from the TiVo Service, our long-term success will depend on securing additional revenue streams such as: . advertising; . revenues from networks; and . electronic commerce or couch commerce. In order to derive substantial revenues from these activities, we will need to attract and retain a large and growing base of subscribers to the TiVo Service. We also will need to work closely with television advertisers, cable and satellite network operators, electronic commerce companies and consumer electronics manufacturers to develop products and services in these areas. We may not be able to effectively work with these parties to develop products that generate revenues that are sufficient to justify their costs. In addition, we are currently obligated to share a portion of these revenues with several of our strategic partners. Any inability to attract and retain a large and growing group of subscribers and strategic partners will seriously harm our ability to support new services and develop new revenue streams. It will take a substantial amount of time and resources to achieve broad market acceptance of the TiVo Service and products that enable the TiVo Service and we cannot be sure that these efforts will generate a broad enough subscriber base to sustain our business. Personal television products and services represent a new, untested consumer electronics category. The TiVo Service is in an early stage of development and many consumers are not aware of its benefits. As a result, it is uncertain whether the market will demand and accept the TiVo Service and products that enable the TiVo Service. Retailers, consumers and potential partners may perceive little or no benefit from personal television products and services. Likewise, consumers may not value, and may be unwilling to pay for the TiVo Service and products that enable the TiVo Service. To develop this market and obtain subscribers to the TiVo Service, we will need to devote a substantial amount of time and resources to educate consumers and promote our products. We may fail to obtain subscribers, encourage the development of new devices that enable the TiVo Service and develop and offer new content and services. We cannot be sure that a broad base of consumers will ultimately subscribe to the TiVo Service or purchase the products that enable the TiVo Service. We face intense competition from a number of sources, which may impair our revenues and ability to generate subscribers. The personal television market is new and rapidly evolving and we expect competition from a number of sources, including: Internet-related companies and companies offering similar products and services. We are likely to face intense direct competition from companies such as WebTV Networks

Inc., SonicBlue and X-TV. These companies offer, or have announced their intention to offer, products with one or more of the TiVo Service's functions or features and, in some instances, combine these features with Internet browsing or traditional broadcast, cable or satellite television programming. Many of these companies have greater brand recognition and market presence and substantially greater financial, marketing and distribution resources than we do. For example, Microsoft Corporation controls and provides financial backing to WebTV. Some of these companies also have established relationships with third party consumer electronic manufacturers, network operators and programmers, which could make it difficult for us to establish relationships and enter into agreements with these third parties. Some of these competitors also have relationships with our strategic partners. For example, DIRECTV recently formed an alliance with Microsoft. Faced with this competition, we may be unable to expand our market share and attract an increasing number of subscribers to the TiVo Service. 36 Established competitors in the consumer electronics market. We compete with consumer electronic products in the television and home entertainment industry. The television and home entertainment industry is characterized by rapid technological innovation, a small number of dominant manufacturers and intense price competition. As a new product category, personal television enters a market that is crowded with several established products and services. The competition for consumer spending in the television and home entertainment market is intense, and our products and services will compete with: . satellite television systems; . video on demand services; . digital video disc players; and . laser disc players. Most of these technologies or devices have established markets, a broad subscriber base and proven consumer acceptance. In addition, many of the manufacturers and distributors of these competing devices have substantially greater brand recognition, market presence, distribution channels, advertising and marketing budgets and promotional and other strategic partners. Faced with this competition, we may be unable to effectively differentiate the personal video recorder or the TiVo Service from these devices. Established competition for advertising budgets. Personal television, in general, and TiVo, specifically, also compete with traditional advertising media such as print, radio and television for a share of advertisers' total advertising budgets. If advertisers do not perceive personal television as an effective advertising medium, they may be reluctant to devote a significant portion of their advertising budget to promotions on the TiVo Service. If we are unable to introduce new products or services, or if our new products and services are unsuccessful, the growth in our subscriber base and revenues may suffer. To attract and retain subscribers and generate revenues, we must continue to add functionality and content and introduce products and services which embody new technologies and, in some instances, new industry standards. This challenge will require hardware and software improvements, as well as new collaborations with programmers, advertisers, network operators, hardware manufacturers and other strategic partners. These activities require significant time and resources and may require us to develop and promote new ways of generating revenue with established companies in the television industry. These companies include television advertisers, cable and satellite network operators, electronic commerce companies and consumer electronics manufacturers. In each of these examples, a small number of large companies dominate a major portion of the market and may be reluctant to work with us to develop new products and services for personal television. If we are unable to further develop and improve the TiVo Service or expand our operations in a cost-effective or timely manner, our ability to attract and retain subscribers and generate revenue will suffer. If we do not successfully establish strong brand identity in the personal television market, we may be unable to achieve widespread acceptance of our products. We believe that establishing and strengthening the TiVo brand is critical to achieving widespread acceptance of our products and services and to establishing key strategic partnerships. The importance of brand recognition will increase as current and potential competitors enter the personal television market with competing products and services. Our ability to promote and position our brand depends largely on the success of our marketing efforts and our ability to provide high quality services and customer support. These activities are expensive and we may not generate a corresponding increase in subscribers or revenues to justify these costs. If we fail to establish and maintain our brand, or if our brand value is damaged or diluted, we may be unable to attract subscribers and effectively compete in the personal television market. Product defects, system failures or interruptions to the TiVo Service may have a negative impact on our revenues, damage our reputation and decrease our ability to attract new subscribers. Our ability to provide uninterrupted service and high quality customer support depends on the efficient and uninterrupted operation of our computer and communications systems. Our computer hardware and other operating systems for the TiVo Service are vulnerable to damage or interruption from earthquakes, floods, fires, power loss, telecommunication failures and similar events. They are also subject to break-ins, sabotage, intentional acts of vandalism and similar misconduct. These types of interruptions in the TiVo Service may reduce our revenues

37 and profits. Our business also will be harmed if consumers believe our service is unreliable. In addition to placing increased burdens on our engineering staff, service outages will create a flood of customer questions and complaints that must be responded to by our customer support personnel. Any frequent or persistent system failures could irreparably damage our reputation and brand. We have detected and may continue to detect errors and product defects. These problems can affect system uptime, result in significant warranty and repair problems, which could cause customer service and customer relations problems. Correcting errors in our software requires significant time and resources, which could delay product releases and affect market acceptance of the TiVo Service. Any delivery by us of products or upgrades with undetected material product defects or software errors could harm our credibility and market acceptance of the personal video recorders and the TiVo Service. Intellectual property claims against us can be costly and could result in the loss of significant rights. From time to time, we may be subject to intellectual property litigation, which could: . be time-consuming and expensive; . divert management's attention and resources away from our business; . cause delays in product delivery and new service introduction; . cause the cancellation of new products or services; or . require us to pay significant royalties or licensing fees. The emerging enhanced-television industry is highly litigious, particularly in the area of on-screen program guides. Additionally, many patents covering interactive television technologies have been granted but have not been commercialized. For example, we are aware of at least seven patents for pausing live television. A number of companies in the enhanced-television industry earn substantial profits from technology licensing, and the introduction of new technologies such as ours is likely to provoke lawsuits from such companies. A successful claim of infringement against us, our inability to obtain an acceptable license from the holder of the patent or other right or our inability to design around an asserted patent or other right could cause our manufacturing partners to cease manufacturing the personal video recorder or us to cease providing our service, or both, which would eliminate our ability to generate revenues. On January 6, 2000, PhoneTel Communications, Inc. filed a lawsuit against us in the U.S. District Court for the Northern District of Texas alleging willful and deliberate violation of U.S. Patent Number 4,873,584, entitled "Computer Control for VCR including Display of Record Playback Listing and Playback Order Selection." held by PhoneTel. The complaint alleged that TiVo infringed the patent by, among other things, making, using, selling, offering to sell and/or importing its television set-top boxes, and sought unspecified monetary damages, an injunction against TiVo's operations, and attorneys' fees and costs. On April 17, 2000, the suit was voluntarily dismissed by PhoneTel. While the suit could be re-filed by PhoneTel, TiVo believes that it has meritorious defenses against the claims and would vigorously defend itself against such claims. In the event the suit is re-filed, TiVo could be forced to incur material expenses, and in the event it were to lose such a suit, its business would be harmed. On January 18, 2000, StarSight Telecast Inc., a subsidiary of Gemstar International Group Limited filed a lawsuit against us in the U.S. District Court for the Northern District of California alleging willful and deliberate violation of U.S. Patent Number 4,706,121, entitled "TV Schedule System and Process," held by StarSight. The complaint alleged that TiVo infringed the patent by, among other things, making, using, selling, offering to sell and/or importing its TV schedule systems and processes without a license from StarSight. Starsight seeks unspecified monetary damages and an injunction against our operations. The suit also seeks attorneys' fees and costs. TiVo believes that we have has meritorious defenses against the suit and intends to vigorously defend ourself. On February 25, 2000, TiVo counterclaimed against StarSight, Gemstar Development Corporation and Gemstar International Group Limited seeking damages for federal antitrust violations and state unfair business practices claims, as well as declaratory relief of non-infringement, invalidity and unenforceability with respect to the patent. TiVo could be forced to incur material expenses during this litigation, and in the event we were to lose this suit our business would be harmed. In addition, we are aware that some media companies may attempt to form organizations to develop standards and practices in the personal television industry. These organizations or individual media companies may attempt to require companies in the personal television industry to obtain copyright or other licenses. A number of 38 articles have appeared in the press regarding the formation of a consortium of broadcast and cable television networks called the Advanced Television Copyright Coalition. Some of those articles have indicated that the coalition is prepared to support litigation and to explore legislative solutions unless the members of the personal television industry agree to obtain license agreements for use of the companies' programming. We have received letters from Time Warner Inc. and Fox Television stating that these entities believe our personal television service exploits copyrighted networks and programs without the necessary licenses and business arrangements. Lawsuits or other actions taken by these types of organizations or companies could make it more difficult for us to introduce new services, delay widespread consumer acceptance of our products and services, restrict our use of some television content, increase our costs and adversely

affect our business. Our success depends on our ability to secure and protect patents, trademarks and other proprietary rights. Our success and ability to compete are substantially dependent upon our internally developed technology. We rely on patent, trademark and copyright law, trade secret protection and confidentiality or license agreements with our employees, customers, partners and others to protect our proprietary rights. However, the steps we take to protect our proprietary rights may be inadequate. We have filed patent applications and provisional patent applications covering substantially all of the technology used to deliver the TiVo Service and its features and functionality. To date, none of these patents has been granted, and we cannot assure you that any patents will ever be granted, that any issued patents will protect our intellectual property or that third parties will not challenge any issued patents. In addition, other parties may independently develop similar or competing technologies designed around any patents that may be issued to us. Our failure to secure and protect our proprietary rights could have a material adverse effect on our business. Laws or regulations that govern the television industry and the delivery of programming could expose us to legal action if we fail to comply or could require us to change our business. Personal television and the delivery of television programming through the TiVo Service and a personal video recorder represents a new category in the television and home entertainment industries. As such, it is difficult to predict what laws or regulations will govern our business. Changes in the regulatory climate or the enforcement or interpretation of existing laws could expose us to additional costs and expenses and could require changes to our business. For example, copyright laws could be applied to restrict the capture of television programming, which would adversely affect our business. It is unknown whether existing laws and regulations will apply to the personal television market. Therefore, it is difficult to anticipate the impact of current or future laws and regulations on our business. The Federal Communications Commission has broad jurisdiction over the telecommunications and cable industries. The majority of FCC regulations, while not directly affecting us, do affect many of the strategic partners on whom we substantially rely for the marketing and distribution of the personal video recorder and the TiVo Service. As such, the indirect effect of these regulations may adversely affect our business. In addition, the FCC could promulgate new regulations, or interpret existing regulations in a manner that would cause us to incur significant compliance costs or force us to alter the features or functionality of the TiVo Service. We need to safeguard the security and privacy of our subscribers' confidential data, and any inability to do so may harm our reputation and brand and expose us to legal action. The personal video recorder collects and stores viewer preferences and other data that many of our subscribers consider confidential. Any compromise or breach of the encryption and other security measures that we use to protect this data could harm our reputation and expose us to potential liability. Advances in computer capabilities, new discoveries in the field of cryptography, or other events or developments could compromise or breach the systems we use to protect our subscribers' confidential information. We may be required to make significant expenditures to protect against security breaches or to remedy problems caused by any breaches. Uncertainty in the marketplace regarding the use of data from subscribers could reduce demand for the TiVo Service and result in increased expenses. Consumers may be concerned about the use of viewing information gathered by the TiVo Service and personal video recorder. Currently, we gather anonymous information about our subscribers' viewing choices while using the TiVo Service, unless a subscriber affirmatively consents to the collection of personally identifiable viewing information. This anonymous viewing information does not identify the individual subscriber. Privacy 39 concerns, however, could create uncertainty in the marketplace for personal television and our products and services. Changes in our privacy policy could reduce demand for the TiVo Service, increase the cost of doing business as a result of litigation costs or increased service delivery costs, or otherwise harm our reputation and business. In the future, our revenues and operating results may fluctuate significantly, which may adversely affect the market price of our common stock. We expect our revenues and operating results to fluctuate significantly due to a number of factors, many of which are outside of our control. Therefore, you should not rely on period-to-period comparisons of results of operations as an indication of our future performance. It is possible that in some future periods our operating results may fall below the expectations of market analysts and investors. In this event, the market price of our common stock would likely fall. Factors that may affect our quarterly operating results include: . demand for personal video recorders and the TiVo Service; . the timing and introduction of new services and features on the TiVo Service; . seasonality and other consumer and advertising trends; . changes in revenue sharing arrangements with our strategic partners; . entering into new or terminating existing strategic partnerships; . changes in the subsidy payments we make to certain strategic partners; . changes in our pricing policies, the pricing policies of our competitors and general pricing trends in the consumer electronics market; . loss of subscribers to the TiVo Service; and . general economic conditions. Because our expenses precede associated revenues, unanticipated shortfalls in revenue could adversely affect our results of operations for any given period and cause the market price of our common stock to fall. Seasonal trends may cause our quarterly operating results to fluctuate and our inability to forecast these trends may adversely affect the market price of our common stock. Consumer electronic product sales have traditionally been much higher during the holiday shopping season than during other times of the year. Although predicting consumer demand for our products is very difficult, we believe that sales of personal video recorders and new subscriptions to the TiVo Service will be disproportionately high during the holiday shopping season when compared to other times of the year. If we are unable to accurately forecast and respond to consumer demand for our products, our reputation and brand will suffer and the market price of our common stock would likely fall. We expect that a portion of our future revenues will come from targeted commercials and other forms of television advertising enabled by the TiVo Service. Expenditures by advertisers tend to be seasonal and cyclical, reflecting overall economic conditions as well as budgeting and buying patterns. A decline in the economic prospects of advertisers or the economy in general could alter current or prospective advertisers' spending priorities or increase the time it takes to close a sale with our advertisers, which could cause our revenues from advertisements to decline significantly in any given period. If we are unable to raise additional capital on acceptable terms, our ability to effectively manage growth and build a strong brand could be harmed. We expect that our existing capital resources will be sufficient to meet our cash requirements through at least the next 12 months. However, as we continue to grow our business, we may need to raise additional capital, which may not be available on acceptable terms or at all. If we cannot raise necessary additional capital on 40 acceptable terms, we may not be able to develop or enhance our products and services, take advantage of future opportunities or respond to competitive pressures or unanticipated requirements. If additional capital is raised through the issuance of equity securities, the percentage ownership of our existing stockholders will decline, stockholders may experience dilution in net book value per share, or these equity securities may have rights, preferences or privileges senior to those of the holders of our common stock. Any debt financing, if available, may involve covenants limiting, or restricting our operations or future opportunities. We have agreed to subsidize the cost of manufacturing personal video recorders, which may adversely affect our operating results and ability to achieve profitability. We have agreements with our consumer electronic manufacturing partners to manufacture the personal video recorder that enables the TiVo Service. We have agreed to pay our manufacturing partners a per-unit subsidy for each personal video recorder that they manufacture and sell. The amount of the payments can vary depending upon the manufacturing costs and selling prices. In addition, in the event our manufacturing partners are unable to manufacture the personal video recorders at the costs currently estimated or if selling prices are less than anticipated, we may owe additional amounts to them, which could adversely affect our operating results. We are obligated to pay a portion of the subsidy when the personal video recorder is shipped, and we will not receive any revenues related to the unit until the unit is sold and the purchaser activates the TiVo Service. We may make additional subsidy payments in the future to consumer electronic and other manufacturers in an effort to maintain a commercially viable retail price for the personal video recorders and other devices that enable the TiVo Service. The lifetime subscriptions to the TiVo Service that we currently offer commit us to providing services for an indefinite period. The revenue we generate from these subscriptions may be insufficient to cover future costs. We currently offer product lifetime subscriptions that commit us to provide service for as long as the personal video recorder is in service. We receive the lifetime subscription fee for the TiVo Service in advance and amortize it as subscription revenue over four years, which is our estimate of the service life of the personal video recorder. If these lifetime subscribers use the personal video recorder for longer than anticipated, we will incur costs without a corresponding revenue stream and therefore will be required to fund ongoing costs of service from other sources. If we lose key management personnel, we may not be able to successfully operate our business. Our future performance will be substantially dependent on the continued services of our senior management and other key personnel. The loss of any members of our executive management team and our inability to hire additional executive management could harm our business and results of operations. In addition, we do not have employment agreements with, or key man insurance policies for, any of our key personnel. We expect to experience volatility in our stock price. The market price of our common stock is highly volatile. Since our initial public offering in September 1999 through April 12, 2001, our common stock has closed between $71.50 per share and $4.00 per share, closing at $4.11 on April 12, 2001. The market price of our common stock may be subject to significant fluctuations in response to, among other things, the factors discussed in this section and the following factors: . Changes in estimates of our financial performance or changes in recommendations by securities analysts; .

Our failure to meet the expectations of securities analysts or investors; . Release of new or enhanced products or introduction of new marketing initiatives by us or our competitors; . Announcements by us or our competitors of the creation, developments under or termination of significant strategic partnerships, joint ventures, significant contracts or acquisitions; . Fluctuations in the market prices generally for technology- related stocks; . Fluctuations in general economic conditions; 41 . Fluctuations in interest rates; . Market conditions affecting the television and home entertainment industry; . Fluctuations in operating results; and . Additions or departures of key personnel. The stock market has from time to time experienced extreme price and volume fluctuations, which have particularly affected the market prices for emerging companies, and which have often been unrelated to their operating performance. These broad market fluctuations may adversely affect the market price of our common stock. Our Certificate of Incorporation, Bylaws, Rights Agreement and Delaware law could discourage a third party from acquiring us and consequently decrease the market value of our common stock. We may become the subject of an unsolicited attempted takeover of our company. Although an unsolicited takeover could be in the best interests of our stockholders, certain provisions of Delaware law, our organizational documents and our Rights Agreement could be impediments to such a takeover. We are subject to the provisions of Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, the statute prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. Our Amended and Restated Certificate of Incorporation and Bylaws also require that any action required or permitted to be taken by our stockholders must be effected at a duly called annual or special meeting of the stockholders and may not be effected by a consent in writing. In addition, special meetings of our stockholders may be called only by our board of directors, the chairman of the board or the chief executive officer. Our Amended and Restated Certificate of Incorporation and Bylaws also provide that directors may be removed only for cause by a vote of a majority of the stockholders and that vacancies on the board of directors created either by resignation, death, disqualification, removal or by an increase in the size of the board of directors may be filled by a majority of the directors in office, although less than a quorum. Our Amended and Restated Certificate of Incorporation also provides for a classified board of directors and specifies that the authorized number of directors may be changed only by resolution of the board of directors. On January 9, 2001, our board of directors adopted a Rights Agreement. Each share of our common stock has attached to it a right to purchase one one- hundredth of a share of our Series B Junior Participating Preferred Stock at a price of $60 per one one-hundredth of a preferred share in the event that the rights become exercisable. The rights become exercisable upon the earlier to occur of (i) ten days following a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of our common stock, subject to limited exceptions, or (ii) ten business days (or such later date as may be determined by action of our board of directors prior to such time as any person or group of affiliated persons becomes an acquiring person as described in the preceding clause) following the commencement or announcement of an intention to make a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 15% or more of our common stock, subject to limited exceptions. These provisions of Delaware law, our Amended and Restated Certificate of Incorporation and Bylaws and our Rights Agreement could make it more difficult for us to be acquired by another company, even if our acquisition is in the best interests of our stockholders. Any delay or prevention of a change of control or change in management could cause the market price of our common stock to decline. The nature of some of our strategic relationships may restrict our ability to operate freely in the future. From time to time, we may engage in discussions with other parties concerning strategic relationships, which may include equity investments by such parties in our company. We currently have such relationships with a number of our strategic partners, including AOL, DIRECTV, Sony and Philips. While we believe that such relationships have enhanced our ability to finance and develop our business model, the terms and conditions of such relationships may place some restrictions on our freedom to operate in the future. 42 Item 7A. Quantitative and Qualitative Disclosure about Market Risk Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio. We do not use derivative financial instruments in our investment portfolio and conduct transactions in U.S. dollars. Our investment portfolio only includes highly liquid instruments with original maturities of less than one year. We are subject to fluctuating interest rates that may impact, adversely or otherwise, our results of operations or cash flows for our cash and cash equivalents and our short-term investments. The table below presents principal amounts and related weighted average interest rates as of

January 31, 2001 for our cash and cash equivalents. We had no short-term investments at this time. Cash and cash equivalents.............................. $124,474,000 Average interest rate.............................. 6.27% Although payments under the operating lease for our facility are tied to market indices, we are not exposed to material interest rate risk associated with the operating lease. Our capital lease obligations are not subject to changes in the interest rate and, therefore, are not exposed to interest rate risk. 43 Item 8. Financial Statements and Supplementary Data The Company's consolidated financial statements and notes thereto appear on pages 46 to 72 of this Transition Report on Form 10-K. The unaudited quarterly results of our consolidated operations for our two most recent fiscal years are incorporated herein by reference under Item 6. "Selected Financial Data." Index to Financial Statements Report of Independent Public Accountants......... 45 Consolidated Balance Sheets...................... 46 Consolidated Statements of Operations............ 48 Consolidated Statements of Stockholders' Equity.. 49 Consolidated Statements of Cash Flows............ 52 Notes to Consolidated Financial Statements....... 54 44 REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS To the Board of Directors and Stockholders of TiVo Inc.: We have audited the accompanying consolidated balance sheets of TiVo Inc. (a Delaware corporation) as of January 31, 2001, December 31, 2000 and December 31, 1999, and the related consolidated statements of operations, stockholders' equity and cash flows for the one-month ended January 31, 2001 and for each of the three years in the period ended December 31, 2000. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion. In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of TiVo Inc. as of January 31, 2001, December 31, 2000 and December 31, 1999, and the results of its operations and its cash flows for the one-month ended January 31, 2001 and for each of the three years in the period ended December 31, 2000 in conformity with accounting principles generally accepted in the United States. /s/ ARTHUR ANDERSEN LLP San Francisco, California March 2, 2001 45 TIVO INC. CONSOLIDATED BALANCE SHEETS January 31, December 31, December 31, 2001 2000 1999 -- ASSETS CURRENT ASSETS Cash and cash equivalents... $124,474,000 $106,096,000 $139,687,000 Short-term investments.. -- -- 6,168,000 Restricted cash.. 50,104,000 93,166,000 -- Accounts receivable, net of allowance for doubtful accounts of $263,000, $211,000 and zero as of January 31, 2001, December 31, 2000 and December 31, 1999 respectively................... 1,772,000 2,036,000 127,000 Accounts receivable-related parties.................................... 4,878,000 4,255,000 210,000 Prepaid expenses and other... 8,391,000 9,093,000 2,589,000 ------------- ------------ ------------ Total current assets.. 189,619,000 214,646,000 148,781,000 PROPERTY AND EQUIPMENT, net of accumulated depreciation of $4,813,000, $4,307,000 and $831,000 as of January 31, 2001, December 31, 2000 and December 31, 1999, respectively.. 21,924,000 21,672,000 4,061,000 ------------- ------------ ------------ Total assets.. $211,543,000 $236,318,000 $152,842,000 ============= ============ ============ LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK AND COMMON STOCK AND STOCKHOLDERS' EQUITY LIABILITIES Accounts payable... $ 21,971,000 $ 20,018,000 $ 8,432,000 Accrued liabilities.. 19,863,000 19,990,000 4,778,000 Accrued liabilities-related parties.................................... 49,839,000 43,847,000 2,349,000 Deferred interest income on restricted cash............................ 2,104,000 1,666,000 -- Deferred revenue, short-term... 6,210,000 5,360,000 2,271,000 Current portion of obligations under capital lease...................... 796,000 792,000 624,000 ------------- ------------ ------------ Total current liabilities... 100,783,000 91,673,000 18,454,000 Long-term portion of obligations under capital lease.................... 538,000 606,000 1,141,000 Deferred revenue, long-term... 12,113,000 11,013,000 -- Other long-term liabilities.. 1,217,000 1,187,000 -- ------------- ------------ ------------ Total long-term liabilities... 13,868,000 12,806,000 1,141,000 ------------- ------------ ------------ Total liabilities... 114,651,000 104,479,000 19,595,000 ------------- ------------ ------------ The accompanying notes are an integral part of these consolidated statements. 46 TIVO INC. CONSOLIDATED BALANCE SHEETS (continued) January 31, December 31, December 31, 2001 2000 1999 -- REDEEMABLE CONVERTIBLE PREFERRED STOCK AND COMMON STOCK Series A Redeemable convertible preferred stock, par value $0.001: Issued and outstanding shares at January 31, 2001, December 31, 2000 and December 31, 1999 are 1,600,000, 2,711,861 and zero, respectively......................... $ 2,000 $ 3,000 $ -- Redeemable common stock, par value $0.001: Issued and outstanding shares at January 31, 2001, December 31, 2000 and December 31, 1999 are zero, 806,889 and zero, respectively...................................... -- 1,000 -- Additional paid-in capital... 46,553,000 96,986,000 -- -------------- -------------- -------------- Total redeemable convertible preferred stock and common stock.... 46,555,000 96,990,000 -- STOCKHOLDERS' EQUITY Series A Convertible preferred stock, par value $0.001: Authorized shares at January 31, 2001 and December 31, 2000 are 10,000,000 and December 31, 1999 are zero Issued and outstanding shares at January 31, 2001 are 1,111,861 and zero at December 31, 2000 and December 31, 1999....................... $ 1,000 $ -- $ -- Common stock, par value $0.001: Authorized shares at January 31, 2001 and December 31, 2000 are 150,000,000 and at December 31, 1999 are 75,000,000 Issued and outstanding shares at January 31, 2001 and December 31, 2000 and December 31, 1999 are 43,430,023, 42,597,530 and 37,746,391, respectively.. 43,000 42,000 38,000 Additional paid-in capital... 406,294,000 351,151,000 235,423,000 Deferred compensation.. (2,786,000) (2,972,000) (6,170,000) Prepaid marketing expenses... (48,458,000) (27,550,000) (16,341,000) Note receivable.. (2,509,000) (2,587,000) (2,822,000) Retained deficit... (302,248,000) (283,235,000) (76,881,000) -------------- -------------- -------------- Total stockholders' equity....................................... 50,337,000 34,849,000 133,247,000 -------------- -------------- -------------- Total liabilities, redeemable convertible preferred stock and common stock and stockholders' equity............................ $ 211,543,000 $ 236,318,000 $152,842,000 ============== ============== ============== The accompanying notes are an integral part of these consolidated statements. 47 TIVO INC. CONSOLIDATED STATEMENTS OF OPERATIONS One-Month One-Month Ended Ended Year Ended ---------- ---------- -- January 31, January 31, December 31, December 31, December 31, 2001 2000 2000 1999 1998 ----------- ----------- ------------ ------------ ------------ (unaudited) Revenues....................................... $ 989,000 $ 134,000 $ 3,571,000 $ 223,000 $ -- Costs and expenses Cost of services (excludes $9,000, $16,000, $141,000, $116,000 and zero of amortization of stock-based compensation for the one-month periods ended January 31, 2001 and 2000 and years ended December 31, 2000, 1999 and 1998, respectively)................................ 1,710,000 1,204,000 18,382,000 4,067,000 -- Research and development (excludes $37,000, $89,000, $791,000, $431,000 and zero of amortization of stock-based compensation for the one-month periods ended January 31, 2001 and 2000 and years ended December 31, 2000, 1999 and 1998, respectively).................. 2,507,000 1,694,000 24,279,000 9,727,000 5,614,000 Sales and marketing (excludes $60,000, $78,000, $992,000, $176,000 and zero of amortization of stock-based compensation for the one-month periods ended January 31, 2001 and 2000 and years ended December 31, 2000, 1999 and 1998, respectively)................................ 7,884,000 3,532,000 102,091,000 24,502,000 1,277,000 Sales and marketing-related parties.............. 6,632,000 2,225,000 53,604,000 15,172,000 -- General and administrative (excludes $69,000, $138,000, $1,191,000, $807,000 and zero of amortization of stock-based compensation for the one-month periods ended January 31, 2001 and 2000 and years ended December 31, 2000, 1999 and 1998 respectively)................... 1,326,000 614,000 14,346,000 7,027,000 2,946,000 Stock-based compensation........................ 175,000 321,000 3,115,000 1,530,000 -- Other operating expense, net.................... -- -- -- 7,210,000 -- ------------ ----------- ------------ ----------- ----------- Loss from operations.......................... (19,245,000) (9,456,000) (212,246,000) (69,012,000) (9,837,000) Interest income............................ 672,000 721,000 7,928,000 2,913,000 136,000 Interest expense and other................. (17,000) (29,000) (522,000) (466,000) (20,000) ------------ ----------- ------------ ----------- ----------- Net loss...................................... (18,590,000) (8,764,000) (204,840,000) (66,565,000) (9,721,000) Less: Series A redeemable convertible preferred stock dividend..................... (423,000) -- (1,514,000) -- -- ------------ ----------- ------------ ----------- ----------- Net loss attributable to common stock............ $(19,013,000) $(8,764,000) $(206,354,000) $(66,565,000) $ (9,721,000) ============ =========== ============= =========== =========== Net loss per common share Basic and diluted............................. $ (0.47) $ (0.25) $ (5.55) $ (5.49) $ (3.25) ============ ===========

============ =========== =========== Weighted average common shares outstanding - Basic and diluted............................ 40,850,353 35,274,071 37,175,493 12,128,560 2,989,717 =========== =========== ============ =========== =========== The accompanying notes are an integral part of these consolidated statements 48 TIVO INC. CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY Convertible Additional Preferred Stock Common Stock Paid-In ------------------------- ------------------------- Shares Amount Shares Amount Capital ----------- ------------ --------- ------- ------------ BALANCE, DECEMBER 31, 1997 5,000,000 $ 2,990,000 2,916,664 $ 3,000 $ 7,000 Issuance of Series B preferred stock at $1.26 per share for cash...................... 3,660,914 4,609,000 -- -- -- Issuance of Series C preferred stock at $1.85 per share for cash...................... 2,500,000 4,618,000 -- -- -- Exercise of stock options for common stock...... -- -- 2,276,458 2,000 130,000 Common stock exchanged for services............ -- -- 198,586 -- 60,000 Series C preferred stock exchanged for services.................................... 13,513 25,000 -- -- -- Common stock repurchases....................... -- -- (174,771) -- (7,000) Net loss...................................... -- -- -- -- -- ----------- ------------ --------- ------- ------------ BALANCE, DECEMBER 31, 1998 11,174,427 $ 12,242,000 5,216,937 $ 5,000 $ 190,000 Issuance of Series D preferred stock at $3.68 per share for cash...................... 1,358,695 4,973,000 -- -- -- Issuance of Series E preferred stock at $7.40 per share for cash...................... 270,270 1,982,000 -- -- -- Issuance of Series F preferred stock at $7.40 per share for cash...................... 405,405 2,960,000 -- -- -- Issuance of Series G preferred stock at $7.40 per share for cash...................... 1,013,513 7,431,000 -- -- -- Issuance of Series H preferred stock at $7.40 per share for cash...................... 1,351,351 9,992,000 -- -- -- Issuance of Series I preferred stock at $10.41 per share for cash..................... 3,121,994 31,494,000 -- -- -- Issuance of Series J preferred stock at $10.41 per share for cash..................... 3,123,789 31,740,000 -- -- -- Conversion of preferred stock to common stock....................................... (21,819,444) (102,814,000) 21,819,444 22,000 102,792,000 Issuance of preferred stock warrants for services.................................... -- -- -- -- 12,828,000 Issuance of common stock through initial public offering, net of issuance costs......... -- -- 6,166,875 6,000 90,249,000 Issuance of common stock for marketing services.................................... -- -- 1,852,329 2,000 12,038,000 Issuance of common stock for marketing services and note receivable.................. -- -- 1,128,867 1,000 7,336,000 Prepaid Deferred Marketing Note Retained Compensation Expense Receivable Deficit Total ----------- ----------- ---------- ------------ ------------ BALANCE, DECEMBER 31, 1997 $ -- $ -- $ -- $ (595,000) $ 2,405,000 Issuance of Series B preferred stock at $1.26 per share for cash...................... -- -- -- -- 4,609,000 Issuance of Series C preferred stock at $1.85 per share for cash...................... -- -- -- -- 4,618,000 Exercise of stock options for common stock...... -- -- -- -- 132,000 Common stock exchanged for services............ -- -- -- -- 60,000 Series C preferred stock exchanged for services.................................... -- -- -- -- 25,000 Common stock repurchases....................... -- -- -- -- (7,000) Net loss...................................... -- -- -- (9,721,000) (9,721,000) ----------- ----------- ---------- ------------ ------------ BALANCE, DECEMBER 31, 1998 $ -- $ -- $ -- $ (10,316,000) $ 2,121,000 Issuance of Series D preferred stock at $3.68 per share for cash...................... -- -- -- -- 4,973,000 Issuance of Series E preferred stock at $7.40 per share for cash...................... -- -- -- -- 1,982,000 Issuance of Series F preferred stock at $7.40 per share for cash...................... -- -- -- -- 2,960,000 Issuance of Series G preferred stock at $7.40 per share for cash...................... -- -- -- -- 7,431,000 Issuance of Series H preferred stock at $7.40 per share for cash...................... -- -- -- -- 9,992,000 Issuance of Series I preferred stock at $10.41 per share for cash..................... -- -- -- -- 31,494,000 Issuance of Series J preferred stock at $10.41 per share for cash..................... -- -- -- -- 31,740,000 Conversion of preferred stock to common stock....................................... -- -- -- -- -- Issuance of preferred stock warrants for services.................................... -- (12,454,000) -- -- 374,000 Issuance of common stock through initial public offering, net of issuance costs......... -- -- -- -- 90,255,000 Issuance of common stock for marketing services.................................... -- (12,040,000) -- -- -- Issuance of common stock for marketing services and note receivable.................. -- (4,515,000) (2,822,000) -- -- The accompanying notes are an integral part of these statements. 49 Covertible Additional Preferred Stock Common Stock Paid-In -------------------------- --------------------------- Shares Amount Shares Amount Capital ----------- ----------- ------------ ----------- ------------ Issuance of common stock warrants for -- -- -- -- 498,000 services................................ Exercise of stock options for common stock... -- -- 525,064 1,000 1,191,000 Exercise of warrants for common stock........ -- -- 1,125,234 1,000 (1,000) Common stock exchanged for services......... -- -- 137,983 -- 605,000 Common stock repurchases.................... -- -- (226,342) -- (28,000) Amortization of prepaid marketing expenses... -- -- -- -- -- Amortization of warrants for services....... -- -- -- -- 25,000 Recognition of deferred compensation......... -- -- -- -- 7,700,000 Stock-based compensation expense............ -- -- -- -- -- Net loss.................................. -- -- -- -- -- ------------ ------------ ------------- ------------ ------------- BALANCE, DECEMBER 31, 1999 -- $ -- 37,746,391 $38,000 $235,423,000 ============ ============ ============= ============ ============= Series A redeemable convertible preferred stock dividend, $0.56 per share.......... -- -- -- -- -- Issuance of common stock for cash and -- -- 4,327,833 4,000 99,996,000 prepaid marketing........................ Issuance costs for common stock............. -- -- -- -- (3,050,000) Recognition of marketing expenses........... -- -- -- -- -- Issuance of warrants for marketing expenses.. -- -- -- -- 246,000 Issuance of common stock warrants for prepaid marketing expenses............... -- -- -- -- 15,364,000 Issuance of common stock - employee stock purchase plan............................ -- -- 177,907 -- 2,185,000 Exercise of stock options for common stock... -- -- 395,465 -- 1,110,000 Common stock repurchases.................... -- -- (50,066) -- (4,000) Reversal of deferred compensation........... -- -- -- -- (83,000) Stock-based compensation expense............ -- -- -- -- -- Amortization of prepaid marketing expenses... -- -- -- -- -- Amortization of note receivable............. -- -- -- -- -- Amortization of warrants.................... -- -- -- -- (36,000) Net loss.................................. -- -- -- -- -- ------------ ------------ ------------- ------------ ------------- BALANCE, DECEMBER 31, 2000 -- $ -- 42,597,530 $ 42,000 $ 351,151,000 ------------ ------------ ------------- ------------ ------------- Prepaid Deferred Markerting Note Retained Compensation Expense Receivable Deficit Total ------------ ----------- ------------ ---------------- ------------- Issuance of common stock warrants for services................................ -- -- -- -- 498,000 Exercise of stock options for common stock... -- -- -- -- 1,192,000 Exercise of warrants for common stock........ -- -- -- -- -- Common stock exchanged for services.......... -- -- -- -- 605,000 Common stock repurchases.................... -- -- -- -- (28,000) Amortization of prepaid marketing expenses... -- 12,668,000 -- -- 12,668,000 Amortization of warrants for services........ -- -- -- -- 25,000 Recognition of deferred compensation......... (7,700,000) -- -- -- -- Stock-based compensation expense............ 1,530,000 -- -- -- 1,530,000 Net loss.................................. -- -- -- (66,565,000) (66,565,000) ------------ ------------ ------------ ------------- ------------- BALANCE, DECEMBER 31, 1999 $(6,170,000) $(16,341,000) $(2,822,000) $ (76,881,000) $ 133,247,000 ============ ============ ============ ============= ============= Series A redeemable convertible preferred stock dividend, $0.56 per share.......... -- -- -- (1,514,000) (1,514,000) Issuance of common stock for cash and prepaid marketing........................ -- (8,500,000) -- -- 91,500,000 Issuance costs for common stock............. -- -- -- -- (3,050,000) Recognition of marketing expenses........... -- 3,888,000 -- -- 3,888,000 Issuance of warrants for marketing expenses.. -- -- -- -- 246,000 Issuance of common stock warrants for prepaid marketing expenses............... -- (15,364,000) -- -- -- Issuance of common stock - employee stock purchase plan............................ -- -- -- -- 2,185,000 Exercise of stock options for common stock... -- -- -- -- 1,110,000 Common stock repurchases.................... -- -- -- -- (4,000) Reversal of deferred compensation........... 83,000 -- -- -- -- Stock-based compensation expense............ 3,115,000 -- -- -- 3,115,000 Amortization of prepaid marketing expenses... -- 7,160,000 -- -- 7,160,000 Amortization of note receivable............. -- -- 235,000 -- 235,000 Amortization of warrants.................... -- 1,607,000 -- -- 1,571,000 Net loss.................................. -- -- -- (204,840,000) (204,840,000) ----------- ----------- ----------- ------------- ------------ BALANCE, DECEMBER 31, 2000 $ (2,972,000) $(27,550,000) $ (2,587,000) $(283,235,000) $ 34,849,000 The accompanying notes are an integral part of these statements. 50 Convertible Preferred Stock Common Stock Additional ----------------------------- --------------------------- Paid-In Shares Amount Shares Amount Capital ------------- ------------- ----------- ------------ ----------- Series A redeemable convertible preferred stock dividend declared, $0.16 per share.... -- -- -- -- -- Removal of redemption feature-Series A convertible preferred stock................ 1,111,861 1,000 -- -- 32,351,000 Removal of redemption feature-common stock.... -- -- 806,889 1,000 18,082,000 Exercise of stock options for common stock.... -- -- 25,604 -- 21,000 Issuance of common stock warrants for marketing expense.......................... -- -- -- -- 76,000 Repricing of common stock warrants for prepaid marketing expenses and other consideration............................ -- -- -- -- 4,874,000 Recognition of prepaid marketing expenses..... -- -- -- -- -- Amortization of value of warrants............ -- -- -- -- -- Amortization of prepaid marketing expenses.... -- -- -- -- -- Recognition of marketing expenses........... -- -- -- -- -- Reversal of deferred compensation............ -- -- -- -- (11,000) Recognition of stock-based compensation expense.................................. -- -- -- -- -- Amortization of note receivable.............. -- -- -- -- -- Issuance costs for convertible preferred stock and common stock..................... -- -- -- -- (250,000) Net loss.................................... -- -- -- -- -- ----------- ------------ ---------- ------------ ------------ BALANCE, JANUARY 31, 2001.................... 1,111,861 $ 1,000 43,430,023 $ 43,000 $ 406,294,000 =========== ============ =========== ============= ============= Prepaid Deferred Marketing Note Retained Compensation Expense Receivable Deficit Total ------------ ------------ ----------- --------- ---------- Series A redeemable convertible preferred stock dividend declared,

$0.16 per share.... -- -- -- (423,000) (423,000) Removal of redemption feature-Series A convertible preferred stock................ -- -- -- -- 32,352,000 Removal of redemption feature-common stock.... -- -- -- -- 18,083,000 Exercise of stock options for common stock.... -- -- -- -- 21,000 Issuance of common stock warrants for marketing expenses........................ -- -- -- -- 76,000 Repricing of common stock warrants for prepaid marketing expenses and other consideration............................. -- (4,874,000) -- -- -- Recognition of prepaid marketing expenses.... -- (18,502,000) (18,502,000) Amortization of value of warrants............ -- 453,000 -- -- 453,000 Amortization of prepaid marketing expenses.... -- 627,000 -- -- 627,000 Recognition of marketing expenses........... -- 1,388,000 -- -- 1,388,000 Reversal of deferred compensation............ 11,000 -- -- -- -- Recognition of stock-based compensation expense................................... 175,000 -- -- -- 175,000 Amortization of note receivable.............. -- -- 78,000 -- 78,000 Issuance costs for convertible preferred stock and common stock..................... -- -- -- -- (250,000) Net loss.................................... -- -- -- (18,590,000) (18,590,000) ----------- ------------ ----------- ------------ ------------ BALANCE, JANUARY 31, 2001.................... $(2,786,000) $ (48,458,000) $(2,509,000) $(302,248,000) $ 50,337,000 =========== ============ ========== ============ ============ The accompanying notes are an integral part of these statements. 51 TIVO INC. CONSOLIDATED STATEMENTS OF CASH FLOWS One-Month One-Month Ended Ended -------------------------------- January 31, January 31, Year Ended December 31, -- 2001 2000 2000 1999 -- (unaudited) CASH FLOWS FROM OPERATING ACTIVITIES Net loss.. $(18,590,000) $(8,764,000) $(204,840,000) $(66,565,000) Adjustments to reconcile net loss to net cash used in operating activities: Depreciation and amortization............................. 506,000 104,000 3,476,000 661,000 Issuance of preferred stock warrants for services.......... -- -- -- 374,000 Issuance of common stock warrants for services............ 76,000 -- 246,000 498,000 Common stock exchanged for services....................... -- -- -- 605,000 Amortization of prepaid marketing expenses................ 627,000 186,000 7,160,000 12,668,000 Amortization of warrants issued for services.............. 453,000 115,000 1,571,000 110,000 Recognition of prepaid marketing expense.................. 1,388,000 -- 3,888,000 -- Stock-based compensation expense.......................... 175,000 322,000 3,115,000 1,530,000 Amortization of note receivable........................... 78,000 -- 235,000 -- Changes in assets and liabilities: Accounts receivable...................................... 264,000 (63,000) (1,909,000) (337,000) Accounts receivable-related parties....................... (623,000) 100,000 (4,045,000) -- Prepaid expenses and other................................ (17,800,000) (1,552,000) (6,504,000) (2,335,000) Accounts payable... 1,953,000 1,780,000 11,586,000 8,127,000 Accrued liabilities...................................... (127,000) 1,058,000 15,212,000 4,103,000 Accrued liabilities-related parties....................... 5,992,000 2,072,000 41,498,000 2,349,000 Deferred revenue... 850,000 520,000 3,089,000 2,271,000 Long-term deferred revenue................................ 1,100,000 -- 11,013,000 -- Other long-term liabilities.............................. 30,000 -- 1,187,000 -- -- Net cash used in operating activities....................... (23,648,000) (4,122,000) (114,022,000) (35,941,000) -- CASH FLOWS FROM INVESTING ACTIVITIES Acquisition of property and equipment, net................... (758,000) (1,639,000) (21,087,000) (3,930,000) Sale (purchase) of short-term investments, net............... -- 3,530,000 6,168,000 (6,004,000) -- Net cash used in investing activities....................... (758,000) 1,891,000 (14,919,000) (9,934,000) -- CASH FLOWS FROM FINANCING ACTIVITIES Proceeds from issuance of convertible preferred stock, net of issuance costs.. -- -- -- 90,572,000 Proceeds from issuance of common stock through initial public offering, net of issuance costs............................ -- -- -- 90,255,000 Proceeds from issuance of common stock....................... -- -- 100,000,000 -- Payment of issuance costs for redeemable convertible preferred stock, redeemable common stock and common stock.... (250,000) -- (6,060,000) -- Proceeds from release of restricted cash..................... 43,500,000 -- -- -- Proceeds from issuance of common stock - employee stock -- purchase plan... -- -- 2,185,000 Proceeds from exercise of common stock options................ 21,000 14,000 1,110,000 1,192,000 Series A redeemable convertible preferred stock dividend...... (423,000) -- (1,514,000) -- Repurchase of common stock.................................. -- -- (4,000) (28,000) Net (payments) borrowings under capital lease................ (64,000) 188,000 (367,000) 1,765,000 Borrowings under line of credit.............................. -- -- -- -- Repayments under line of credit............................. -- -- -- -- Increase (decrease) in bank overdraft........................ -- -- -- (442,000) -- Net cash provided by financing activities................... 42,784,000 202,000 95,350,000 183,314,000 --- NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS........... 18,378,000 (2,029,000) (33,591,000) 137,439,000 --- ----------- 1998 ----------- CASH FLOWS FROM OPERATING ACTIVITIES Net loss.. $(9,721,000) Adjustments to reconcile net loss to net cash used in operating activities: Depreciation and amortization............................ 242,000 Issuance of preferred stock warrants for services......... -- Issuance of common stock warrants for services............ -- Common stock exchanged for services....................... 85,000 Amortization of prepaid marketing expenses................ -- Amortization of warrants issued for services.............. -- Recognition of prepaid marketing expense.................. -- Stock-based compensation expense.......................... -- Amortization of note receivable.......................... -- Changes in assets and liabilities: Accounts receivable...................................... -- Accounts receivable-related parties....................... -- Prepaid expenses and other................................ (282,000) Accounts payable... 188,000 Accrued liabilities...................................... 649,000 Accrued liabilities-related parties....................... -- Deferred revenue... -- Long-term deferred revenue................................ -- Other long-term liability................................ -- ----------- Net cash used in operating activities....................... (8,839,000) ----------- CASH FLOWS FROM INVESTING ACTIVITIES Acquisition of property and equipment, net................... (673,000) Sale (purchase) of short-term investments, net................ (144,000) ----------- Net cash used in investing activities....................... (817,000) ----------- CASH FLOWS FROM FINANCING ACTIVITIES Proceeds from issuance of convertible preferred stock, net of issuance costs... 9,227,000 Proceeds from issuance of common stock through initial public offering, net of issuance costs............................. -- Proceeds from issuance of common stock....................... -- Payment of issuance costs for redeemable convertible preferred stock, redeemable common stock and common stock.... -- Proceeds from release of restricted cash..................... -- Proceeds from issuance of common stock - employee stock purchase plan... -- Proceeds from exercise of common stock options............... 132,000 Series A redeemable convertible preferred stock dividend...... -- Repurchase of common stock.................................. (7,000) Net (payments) borrowings under capital lease................ -- Borrowings under line of credit............................. 610,000 Repayments under line of credit............................. (610,000) Increase (decrease) in bank overdraft........................ 442,000 ----------- Net cash provided by financing activities................... 9,794,000 ----------- NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS........... 138,000 ----------- 52 TIVO INC. CONSOLIDATED STATEMENTS OF CASH FLOWS (continued) One-Month One-Month Ended Ended --- January 31, January 31, Year Ended December 31, --- 2001 2000 2000 1999 1998 --- CASH AND CASH EQUIVALENTS: Balance at beginning of period.............................. 106,096,000 139,687,000 139,687,000 2,248,000 2,110,000 --- Balance at end of period.................................... $124,474,000 $137,658,000 $106,096,000 $139,687,000 $2,248,000 === SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION Cash paid for interest..................................... $ (11,000) $ (11,000) $ (117,000) $ (41,000) $ (19,000) (Recognition) reversal of deferred stock-based compensation.. 11,000 63,000 83,000 (7,700,000) -- SUPPLEMENTAL DISCLOSURE OF RESTRICTED CASH AND OTHER FINANCING INFORMATION Restricted cash received from issuance of Series A redeemable convertible preferred stock................... $ -- $ -- $ 81,356,000 $ -- $ -- Restricted cash received from issuance of redeemable common -- -- stock... -- -- 18,644,000 Restricted cash used for prepaid marketing expenses.......... -- -- (8,500,000) -- -- Restricted cash released to cash in connection with Second (43,500,000) -- -- -- -- Amendment to AOL Investment Agreement...................... Interest income earned on restricted cash................... 438,000 -- 1,666,000 -- -- Issuance of common stock warrants for prepaid marketing -- -- -- -- expenses.. (15,364,000) Issuance of Series A convertible preferred stock for (33,356,000) -- -- -- -- Series A redeemable preferred stock and release of restricted cash....................................... Issuance of common stock for redeemable common stock and (18,644,000) -- -- -- -- release of restricted cash................................ Incremental value of repriced common stock warrants.......... 4,874,000 -- -- -- -- Stock issued for a note receivable.......................... -- -- -- 2,822,000 -- Equipment acquired under capital lease...................... -- -- 367,000 1,978,000 -- 53 TIVO INC. NOTES TO CONSOLIDATED FINANCIAL STATEMENTS 1. NATURE OF OPERATIONS TiVo Inc. (the "Company" or

"TiVo") was incorporated in August 1997 as a Delaware corporation and is located in Alviso, California. On August 21, 2000, TiVo (UK) Ltd., a wholly owned subsidiary of TiVo Inc., was incorporated in the United Kingdom. The Company has developed a subscription-based personal television service (the "TiVo Service") that provides viewers with the ability to pause, rewind and play back live or recorded television broadcasts, as well as to search for, watch and record programs. The TiVo Service also provides television listings, daily suggestions and special viewing packages. The TiVo Service relies on three key components: the personal video recorder, the TiVo remote control and the TiVo Broadcast Center. The Company conducts its operations through one reportable segment. The Company continues to be subject to certain risks, including the uncertainty of availability of additional financing; dependence on third parties for manufacturing, marketing and sales support; the uncertainty of the market for personal television; dependence on key management; limited manufacturing, marketing and sales experience; and the uncertainty of future profitability and positive cash flow. TiVo has recognized limited revenue, has incurred significant losses and has had substantial negative cash flow. During the one-month transition period ended January 31, 2001 and the year ended December 31, 2000, TiVo recognized subscription revenues of $989,000 and $3.6 million, respectively. As of January 31, 2001, TiVo had an accumulated deficit of $302.2 million. In April 2001, in an effort to eliminate the need for additional funding during its current fiscal year, the Company reevaluated its business model and announced its new operating plan. The plan supports TiVo's key objectives of building its subscriber base and increasing revenue, while reducing its operating expenses by nearly 35%. TiVo intends to execute several key initiatives in order to achieve its targeted cost reductions. TiVo expects that these initiatives will reduce its cash burn- rate by approximately $60 million for the current fiscal year ending January 31, 2002. The initiatives are: leveraged marketing, a new, low cost platform, reduced infrastructure costs, reduced service operations costs and headcount reductions. With this change in operating plan, TiVo believes that its capital is adequate to fund operations, capital expenditures and working capital needs through its fiscal year ending January 31, 2002. 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES Change in Year End On January 30, 2001, the Company announced a fiscal year end change from December 31 of each year to January 31 of each year. Cash and Cash equivalents The Company classifies financial instruments as cash equivalents if the original maturity of such instruments is three months or less. Short-term investments Short-term investments consist of commercial paper investments and certificates of deposit with original maturities at the date of purchase ranging between three and twelve months. The Company classifies these investments as held to maturity and records the instruments at amortized cost, which approximates fair value due to the short maturities. Restricted Cash Under the terms of the Investment Agreement between America Online, Inc. ("AOL") and TiVo, dated June 9, 2000 and the First Amendment to the Investment Agreement dated September 11, 2000 (the "Investment Agreement"), the Company deposited $91.5 million into an interest bearing escrow account as restricted cash. The $91.5 million in restricted cash is intended to be used for subsidy payments to manufacturer(s) 54 in accordance with the Production Integration and Marketing Agreement between AOL and TiVo, (the "Commercial Agreement"). On January 30, 2001, the Company entered into the Second Amendment to the Investment Agreement with AOL (the "Second Amendment"). The Second Amendment provided for, among other things, an amendment to the Escrow Agreement, dated as of September 11, 2000, by and among the Company, AOL and U.S. Trust Company, National Association, as escrow agent, pursuant to which the Company had deposited a portion of the proceeds it received from AOL in connection with AOL's purchase of shares of the Company's Series A redeemable convertible preferred stock. The First Amendment to the Escrow Agreement, dated as of January 30, 2001, authorized the release to the Company of $43.5 million in restricted funds previously held in escrow pursuant to the Escrow Agreement (see Note 9). Accounts Receivable - Related Parties Accounts Receivable-related parties consist of amounts owed to the Company from the Company's strategic partners such as DIRECTV, Inc. ("DIRECTV"), Philips Business Electronics B.V. ("Philips"), Quantum Corporation ("Quantum") and Sony Corporation of America ("Sony"). These receivables are comprised of monies collected from subscribers on the Company's behalf, volume discounts and amounts owed for reimbursement of a portion of the Company's development costs. Prepaid Expenses and Other Prepaid expenses consist of payments made in advance of recognizing the expense, including primarily marketing expenses related to media purchases and trade show expenses. Other consists primarily of TiVo stand-alone recorders and DIRECTV receivers with TiVo held for future marketing programs. Property and Equipment Property and equipment are stated at cost. Depreciation is computed using the straight-line method over estimated useful lives as follows: Furniture and fixtures................ 3-5 years Computer and office equipment......... 3-5 years Lab equipment........................ 3 years Leasehold improvements............... 7 years or the life of the lease Capitalized software................. 1-5 years Maintenance and repair expenditures are expensed as incurred. Income Taxes The Company accounts for income taxes under Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" (SFAS No. 109). Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets or liabilities of a change in tax rates is recognized in the period in which the rate change occurs. Valuation allowances have been established when necessary to reduce deferred tax assets to the amounts expected to be recovered. Other Long-Term Liabilities Other long-term liabilities consist of deferred rent and security deposit held from our tenant. Deferred rent of $883,000 results from the recognition of rent expense under facilities lease amortized on a straight line basis over 7 years, the life of the related lease. The security deposit from our tenant relates to space in our Alviso facility that we have subleased. Fair Value of Financial Instruments The carrying amounts of cash and cash equivalents, short-term investments, accounts receivable, and accounts payable approximate fair value due to the short-term maturity of these instruments. 55 Business Concentrations and Credit Risk Financial instruments that subject the Company to concentrations of credit risk consist primarily of cash. The Company maintains cash with various financial institutions. The Company performs periodic evaluations of the relative credit standing of these institutions. The majority of the Company's customers are concentrated in the United States. The Company is subject to a slight amount of credit risk of these customers as subscription revenue is primarily obtained through credit card sales. The reserve for doubtful accounts at January 31, 2001 was $263,000. The Company does not consider credit risk associated with accounts receivable-related parties (Philips, Sony, AOL, DIRECTV and Quantum) to be material. Net Loss Per Common Share Net loss per share is calculated in accordance with SFAS No. 128, "Earnings Per Share," and SEC Staff Accounting Bulletin No. 98 (SAB No. 98). Under the provisions of SFAS No. 128 and SAB No. 98, Basic net loss per common share is computed by dividing net loss by the weighted average number of common shares outstanding. Shares used in the computation of the one-month transition period ended January 31, 2001, net loss per share amount do not include repurchasable common stock issued to DIRECTV (see Note 10), options and warrants to purchase common stock, Series A convertible preferred stock and Series A redeemable convertible preferred stock (see Note 9) and unvested, repurchasable common stock issued under the employee stock option plans (see Note 8). Diluted net loss per common share is calculated by dividing net loss attributable to common stock by the weighted average number of common shares and dilutive common share equivalents outstanding. The net loss attributable to common stock is calculated by deducting the Series A redeemable convertible preferred stock dividend from the net loss. Diluted net loss per share does not include the effect of the following antidilutive common share equivalents: January 31, December 31, -------------- -- 2001 2000 1999 1998 -------------- -------------- -------------- -------------- Series A redeemable convertible preferred stock...... 1,600,000 2,711,861 -- -- Series A convertible preferred stock................ 1,111,861 -- -- 11,174,427 Convertible preferred stock warrants................ -- -- -- 52,083 Redeemable common stock............................. -- 806,889 -- -- Repurchasable common stock, related parties.......... 1,128,867 1,128,867 1,128,867 -- Repurchasable common stock.......................... 1,060,849 1,103,736 1,364,366 2,024,187 Options to purchase common stock.................... 7,397,307 7,425,698 4,346,522 1,235,000 Warrants to purchase common stock................... 2,694,861 2,649,380 -- -- -- Total 14,993,745 15,826,431 6,839,755 14,485,697 == Stock-Based Compensation and Stock Exchanged for Services The Company has elected to follow Accounting Principles Board Opinion No. 25 (APB 25), "Accounting for Stock Issued to Employees," and related interpretations in accounting for its employee stock options. Under APB 25, when the exercise price of employee stock options is less than the market price of the underlying stock on the date of grant, compensation expense is recorded for the difference between fair value and the exercise price. Expense associated with stock-based compensation is being amortized on an accelerated basis over the vesting period of the individual award, generally four years. The method of amortization is in accordance with Financial Accounting Standards Board ("FASB") Interpretation No. 28, under which value assigned to options vesting in future periods is ratably amortized beginning upon issuance of the option rather than at the vesting date. No stock compensation expense was recorded in 1998 and 1997. The Company has recorded stock-based compensation expenses of $175,000, $3.1 million and $1.5 million for one-month transition period ended January 31, 2001 and years ended December 31, 2000 and 1999, respectively. The Company has adopted the disclosure-only provisions of SFAS No. 123, "Accounting for Stock- Based Compensation." The value of warrants, options or stock exchanged for services is expensed over the period benefited. The warrants and options are valued using the Black-Scholes option pricing model. To calculate the expense, the 56 Company uses either the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measurable. Revenue Recognition In December 1999, the Securities and Exchange Commission (SEC) issued Staff Accounting Bulletin (SAB) No. 101, "Revenue Recognition." SAB 101 clarifies the SEC staff's views on application of generally accepted accounting principles to revenue recognition. The Company has concluded its revenue recognition policy continues to be appropriate and in accordance with generally accepted accounting principles and SAB 101. Revenue arises from two sources, subscription revenue and non-subscription revenue. Subscription revenues represent revenues from customer subscriptions to the TiVo Service. Subscriptions to the TiVo Service are available on a monthly, annual or lifetime basis. Subscription fees are generally charged to customers' credit cards and are generally billed in advance on a monthly basis. A lifetime subscription covers the life of the particular personal video recorder purchased. Revenues from subscriptions are recognized ratably over the subscription period. Subscription revenues from lifetime subscriptions are recognized ratably over a four-year period, the best estimate of the useful life of the personal video recorder. Deferred revenue relates to subscription fees collected but for which service has not yet been provided. Non-subscription revenue primarily includes Charter Advertising and Sponsorship revenue from consumer companies and media networks who have provided content on the TiVo Service. Customers are billed on a net terms basis and the revenue is recognized as the advertising and content is delivered. Research and Development Research and development expenses consist primarily of employee salaries and related expenses and consulting fees relating to the development of the TiVo Service and products that enable the TiVo Service. Research and development costs are expensed as incurred. Sales and Marketing--Related Parties Expense Sales and marketing--related parties expense consists of cash and non-cash charges related to the Company's agreements with DIRECTV, Philips, Quantum, Sony, AOL and Creative Artists Agency, LLC ("CAA"), all of which hold stock in the Company (see Note 10). Other Operating Expense, Net Prior to the transition of manufacturing and distribution responsibility to Philips in the fourth quarter of 1999, the Company sold personal video recorders directly to consumers. The Company's direct sales of personal video recorders of $13.5 million, less the cost of the personal video recorders sold of $20.7 million for the year ended December 31, 1999 was classified as other operating expense, net. Other operating expense, net is considered incidental to the Company's business and was recognized upon shipment to the customer. The Company recorded a provision for estimated warranty costs and returns at the time of sale. This reserve was zero at both January 31, 2001 and December 31, 2000 and $30,000 at December 31, 1999. Advertising Costs In accordance with Statement of Position 93-7, "Reporting on Advertising Costs," the Company expensed advertising costs as incurred. Advertising expenses were $3.2 million for the one-month transition period ended January 31, 2001, $58.4 million for the year ended December 31, 2000, $13.4 million for the year ended December 31, 1999 and zero for the year ended December 31, 1998. Comprehensive Income The Company has no material components of other comprehensive income or loss and, accordingly, the comprehensive loss is the same as the net loss for all periods presented. Use of Estimates 57 The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions. Actual results could differ from those estimates. Reclassifications Certain reclassifications have been made to prior years' financial information to conform with the current period presentation. 3. PROPERTY AND EQUIPMENT, NET Property and equipment, net consists of the following: January 31, December 31, ---------------------- ------------------------------ 2001 2000 1999 ---------------------- ----------- ---------- Furniture and fixtures...................... $ 3,397,000 $ 3,399,000 $ 184,000 Computer and office equipment............... 11,049,000 10,529,000 3,384,000 Lab equipment.............................. 1,125,000 1,106,000 559,000 Leasehold improvements...................... 6,060,000 6,059,000 287,000 Capitalized software........................ 5,106,000 4,886,000 478,000 --- 26,737,000 25,979,000 4,892,000 Accumulated depreciation.................... (4,813,000) (4,307,000) (831,000) --- Property and equipment, net................. $21,924,000 $21,672,000 $4,061,000 === Equipment under capital leases was $2.3 million at ended January 31, 2001 and at December 31, 2000 and $2.0 million at December 31, 1999. Depreciation and amortization expense was $501,000, $3.6 million, $661,000 and $155,000 at January 31, 2001 and at years ended December 31, 2000, 1999 and 1998, respectively. 4. ACCRUED LIABILITIES Accrued liabilities consist of the following: January 31, December 31, ---------------- ------------------------------------ 2001 2000 1999

---------------- ----------------- ----------------- Marketing and promotions................. $14,843,000 $15,492,000 $2,012,000 Compensation and vacation................ 1,506,000 1,301,000 626,000 Consulting and outside services........... 575,000 732,000 750,000 Commissions.............................. -- -- 227,000 Employee stock purchase plan............. 629,000 441,000 491,000 Legal and accounting..................... 713,000 820,000 188,000 Telecommunications and utilities.......... 691,000 458,000 -- Prepaid rent from tenant................. 669,000 669,000 -- Other.................................... 237,000 77,000 484,000 -- $19,863,000 $19,990,000 $4,778,000 == 5. LINE OF CREDIT In December 1997, the Company established a $750,000 line of credit with a financial institution, which expired on August 15, 1999. The line was partially utilized to secure a letter of credit in the amount of $600,000, which expired in July 1999. No amounts were outstanding at January 31, 2001, or at December 31, 2000, 1999 and 1998. 58 6. INCOME TAXES There was no provision or benefit for income taxes for the one-month transition period ended January 31, 2001, or for the years ended December 31, 2000, 1999 and 1998. Significant components of deferred tax assets were as follows as of January 31, 2001: Net operating loss carryforwards...................... $ 104,590,000 Tax credit carryforwards.............................. 4,687,000 Temporary differences................................. Deferred revenue..................................... 8,181,000 Deferred marketing.................................. 5,558,000 Other... 810,000 ------------ Total Temporary differences.................. 14,549,000 Gross deferred tax assets............................ 123,825,000 Valuation allowance.................................. (123,825,000) ------------ Net deferred tax assets.............................. $ -- ============= As of January 31, 2001, the Company had a tax net operating loss (NOL) carryforward of approximately $261.0 million for federal and $162.7 million for California purposes. The federal NOL expires beginning in 2017, and the California NOL expires beginning in 2005. A significant change in ownership of the Company may limit the Company's ability to utilize these NOL carryforwards. SFAS No. 109 requires that the tax benefit of such NOL be recorded as an asset. A valuation allowance for the entire amount has been provided because of uncertainties about the Company's ability to realize the value of the deferred tax assets. 7. REDEEMABLE CONVERTIBLE PREFERRED STOCK, COMMON STOCK AND STOCKHOLDERS' EQUITY Common Stock In 1998, the Company issued 2,276,458 shares of common stock as a result of the exercise of stock options. During 1998, 174,771 shares of common stock were repurchased in accordance with the terms the Company's stock option plan (see Note 8). As of December 31, 1998, the Company had the right to repurchase 2,024,187 unvested shares at the stock issuance price, if the holders' service with the Company terminated. In 1999, the Company issued 525,064 shares of common stock as a result of the exercise of stock options. During 1999, 226,342 shares of common stock were repurchased in accordance with the terms the Company's stock option plan (see Note 8). The Company had the right to repurchase 1,364,366 unvested shares as of December 31, 1999, at the stock issuance price, if the holders' service with the Company terminated. See Note 10 for a description of DIRECTV shares subject to repurchase. In 2000, the Company issued 395,465 shares of common stock as a result of the exercise of stock options and 177,907 shares of common stock as part of the Employee Stock Purchase Plan. The Company issued 83,967 and 96,940 shares of common stock under the employee stock purchase plan in April and October 2000, respectively. During 2000, 50,066 shares of common stock were repurchased in accordance with the terms the Company's stock option plan (see Note 8). The Company had the right to repurchase 1,103,736 unvested shares as of December 31, 2000, at the stock issuance price, if the holders' service with the Company terminated. See Note 10 for a description of DIRECTV shares subject to repurchase. In 1998, the Company issued 198,586 shares of common stock to consultants and vendors in exchange for services. In 1999, the Company issued 137,983 shares of common stock to consultants and vendors in exchange for services. The common stock issued was recorded at the estimated fair value of the common stock at the time the services were performed and the related expense was recorded. The Company's management believes that the value of the common stock issued approximates the value of services received. In 1999, the Company issued 1,852,329 shares of common stock in exchange for marketing services under the DIRECTV Agreement and 1,128,867 shares of common stock in exchange for a $2.8 million promissory note due at the end of a three-year service period. 59 The Company's initial public offering ("IPO") of 6,166,875 shares of common stock with net proceeds of $90.3 million was effective on September 29, 1999 and closed on October 5, 1999. At the closing date, the preferred stock was converted into common stock on a one-for-one basis and the warrants were exercised. The Company issued 1,125,234 shares of common stock as a result of the exercise of common stock warrants. At the Annual Meeting of Stockholders held on July 26, 2000, the proposal to amend and restate the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 75 million shares to 150 million shares was approved. In September 2000, the Company issued 5,134,722 shares of common stock at $23.11 per share, of which 806,889 shares were subject to redemption as of December 31, 2000, to AOL in exchange for $118.6 million, before issuance costs of $4.4 million. The portion of the common stock subject to redemption was shown as redeemable common stock on the Company's consolidated financial statements. The Company also issued Initial Warrants A and B to AOL pursuant to the terms of the Investment Agreement. The estimated value of the warrants of $16.0 million was recorded as prepaid marketing expense (contra-equity) when issued (see Note 9 for additional description). On January 30, 2001, the Company entered into the Second Amendment to the Investment Agreement with AOL, dated as of June 9, 2000, as amended by the First Amendment to the Investment Agreement, dated as of September 11, 2000. Pursuant to the terms of the Agreement, the redemption feature was removed from 806,889 shares of common stock subject to redemption. These shares are now classified as common stock. In January 2001, the Company issued 25,604 shares of common stock as a result of the exercise of stock options. Convertible Preferred Stock In September and October 1997, the Company issued 5,000,000 shares of Series A preferred stock at $0.60 per share. In May, June and July 1998, the Company issued 3,660,914 shares of Series B preferred stock at $1.26 per share. In October 1998, the Company issued 2,500,000 shares of Series C preferred stock at $1.85 per share. In December 1998, the Company issued 13,513 shares of Series C preferred stock at $1.85 per share in exchange for services received. In January 1999, the Company issued 1,358,695 shares of Series D preferred stock at $3.68 per share. In March 1999, the Company issued 270,270 shares of Series E preferred stock at $7.40 per share. In April 1999, the Company issued 405,405 shares, 1,013,513 shares and 1,351,351 shares of Series F, G and H preferred stock, respectively, at $7.40 per share. In July 1999, the Company issued 3,121,994 shares of Series I preferred stock at $10.41 per share. In August 1999, the Company issued 480,307 shares of Series J preferred stock at $10.41 per share. In September 1999, the Company issued 2,643,482 shares of Series J preferred stock at $10.41 per share. On October 5, 1999, 21,819,444 shares of the outstanding preferred stock converted into common stock on a one-for-one basis, therefore, no shares of preferred stock were outstanding as of December 31, 1999. At the Annual Meeting of Stockholders held on July 26, 2000, the proposal to amend and restate the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares of preferred stock from 2 million shares to 10 million shares was approved. On January 30, 2001, pursuant to the terms of the Second Amendment to the Investment Agreement, the redemption feature was removed from 1,111,861 shares of convertible preferred stock subject to redemption. These shares are now classified as convertible preferred stock. Redeemable Convertible Preferred Stock In September 2000, the Company issued 2,711,861 shares of Series A redeemable convertible preferred stock at $30.00 per share to AOL in exchange for $81.4 million, before issuance costs of $2.4 million. See Note 9 for a description of Series A redeemable convertible preferred stock issued to AOL. On January 30, 2001, pursuant to the terms of the Second Amendment to the Investment Agreement, the redemption feature was removed from 1,111,861 shares of convertible preferred stock subject to redemption. These 60 shares are now classified as convertible preferred stock. As of January 31, 2001 there were 1,600,000 shares of redeemable convertible preferred stock. The following table summarizes the activity related to redeemable convertible preferred stock and common stock subject to redemption for the one- month transition period ended January 31, 2001 and the year ended December 31, 2000: Redeemable Convertible Preferred Redeemable Common Stock Stock Additional Total Shares Amount Shares Amount Paid-In Capital ----------- --------------- ---------- -------- ------------- ------------ BALANCE, DECEMBER 31, 1999 -- $ -- -- $ -- $ -- $ -- ----------- --------------- ---------- -------- ------------- ------------ Issuance of Series A redeemable convertible preferred stock.......... 2,711,861 3,000 -- -- 81,353,000 81,356,000 Issuance of common stock subject to redemption.......................... -- -- 806,889 1,000 18,643,000 18,644,000 Issuance costs....................... -- -- -- -- (3,010,000) (3,010,000) ----------- --------------- ---------- -------- ------------- ------------ BALANCE, DECEMBER 31, 2000 2,711,861 3,000 806,889 1,000 96,986,000 96,990,000 Removal of redemption feature-Series A convertible preferred stock........ (1,111,861) (1,000) -- -- (33,355,000) (33,356,000) Removal of redemption feature-common stock.............................. -- -- (806,889) (1,000) (18,643,000) (18,644,000) Issuance costs....................... -- -- -- -- 1,565,000 1,565,000 ----------- --------------- ---------- -------- ------------- ------------ BALANCE, JANUARY 31, 2001 1,600,000 $ 2,000 -- $ -- $ 46,553,000 $ 46,555,000 ========== =============== ========== ======== ============= =========== The following table recaps the balances related to redeemable convertible preferred stock and common stock subject to redemption as of January 31, 2001: Redeemable Convertible Preferred Redeemable Common Stock Stock Additional Total Shares Amount Shares Amount Paid-In Capital --------- -------- -------- ------------------------------------- Series A redeemable convertible 1,600,000 $2,000 -- -- $47,998,000 $48,000,000 preferred stock..................... Issuance costs....................... -- -- -- -- (1,445,000) (1,445,000) --------- -------- -------- ------- ---------- ------------ BALANCE, JANUARY 31, 2001 1,600,000 $2,000 -- $ -- $46,553,000 $46,555,000 ========= ======== ======== ======= =========== ============ Warrants In addition to receiving 156,250 options to purchase common stock under the 1997 Plan, in March 1998, a member of the Company's board of directors received warrants to purchase a total of 52,083 shares of Series A preferred stock at an exercise price of $0.60 per share, the estimated fair market value of the Series A preferred stock at the date of issuance. These warrants were exercised and converted to common stock on a one-for-one basis upon the closing of the initial public offering of the Company's common stock. The value of the above warrants has been included in the calculation of pro forma net loss for the year ended December 31, 1998 under SFAS No. 123, discussed in Note 8. See Note 9 for a description of AOL Initial Common Stock Warrants A and B and Performance Warrants A and B. See Note 10 for a description of common stock warrants issued to DIRECTV under the Warrant and Registration Rights Agreement. See Note 10 for a description of Series C and Series D preferred stock warrants issued to Quantum under a hard disk drive supply agreement. 61 8. EQUITY INCENTIVE PLANS 1997 Equity Incentive Plan Under the terms of the Company's 1997 Equity Incentive Plan, adopted in 1997 and amended and restated in 1999 (the "1997 Plan"), options to purchase shares of the Company's common stock may be granted to employees and other individuals at a price equal to the fair market value of the common stock at the date of grant. The options vest 25 percent after the first year of service, and the remaining 75 percent vest ratably over the next 36 months. Options expire 10 years after the grant date. The terms of the 1997 Plan allow individuals to exercise their options prior to full vesting. In the event that the individual terminates their service to the Company before becoming fully vested, the Company has the right to repurchase the unvested shares at the original option price. The number of shares authorized for option grants under the 1997 Plan is 4,000,000. As of January 31, 2001, options to purchase 677,832 shares of common stock remain outstanding. 1999 Equity Incentive Plan In April 1999, the Company's stockholders approved the 1999 Equity Incentive Plan (the "1999 Plan"). Amendments to the 1999 Plan were adopted in July 1999. The 1999 Plan allows the grant of options to purchase shares of the Company's common stock to employees and other individuals at a price equal to the fair market value of the common stock at the date of grant. The options vest 25 percent after the first year of service, and the remaining 75 percent vest ratably over the next 36 months. Options expire 10 years after the grant date. The terms of the 1999 Plan allow individuals to exercise their options prior to full vesting. In the event that the individual terminates their service to the Company before becoming fully vested, the Company has the right to repurchase the unvested shares at the original option price. The number of shares authorized for option grants under the 1999 Plan is 12,200,000 subject to an annual increase of the greater of 7% of outstanding shares or 4,000,000 shares, up to a maximum of 40,000,000 shares. As of January 31, 2001, options to purchase 6,539,475 shares of common stock remain outstanding. 1999 Non-Employee Directors' Stock Option Plan In July 1999, the Company adopted the 1999 Non-Employee Directors' Stock Option Plan (the "Directors' Plan"). The Directors' Plan provides for the automatic grant of options to purchase shares of the Company's common stock to non-employee directors at a price equal to the fair market value of the stock at the date of the grant. The options vest monthly over two years from the date of grant. The option term is ten years after the grant date but terminates three months after a director's service terminates. The number of shares authorized for option grants under the Directors' Plan is 700,000, subject to an annual increase of 100,000 shares. Options to purchase 180,000 shares of common stock are outstanding as of January 31, 2001. 1999 Employee Stock Purchase Plan In July 1999, the Company adopted the 1999 Employee Stock Purchase Plan (the "Employee Stock Purchase Plan"). The Employee Stock Purchase Plan provides a means for employees to purchase TiVo common stock through payroll deductions of up to 15 percent of their base compensation. The Company offers the common stock purchase rights to eligible employees, generally all full-time employees who have been employed for at least 10 days. This plan allows for common stock purchase rights to be granted to employees of TiVo at a price equal to the lower of 85% of the fair market value on the first day of the offering period or on the common stock purchase date. Under the purchase plan, the board may specify offerings up to 27 months. The number of shares reserved for issuance under this plan is 600,000 subject to automatic annual increase by the lesser of (i) 5 percent of the outstanding shares of common stock on a diluted basis, (ii) 500,000 shares, or (iii) a smaller number as determined by the board of directors. There were zero shares and 177,907 shares of common stock issued as a result of purchases under this plan during the one-month transition period ended January 31, 2001 and during calendar year 2000. As of January 31, 2001, there were 422,093 shares available for future purchases. No additional shares were added to the number of shares reserved for issuance as of January 31, 2001. As of March 31, 2001 the Board approved a 200,000 share increase so that the total shares available for issuance are 800,000 shares. The Company accounts for stock options under APB Opinion No. 25, under which, for the period from August 4, 1997 (Inception) to December 31, 1997 and for the year ended December 31, 1998, no compensation cost was recognized when the awards were granted to employees or directors. The Company has recorded deferred compensation of approximately zero, $83,000 and $7.7 million as a contra-equity account and stock-based compensation expense of $175,000, $3.1 million and $1.5 million for the one-month transition period ended January 31, 2001 and years ended December 31, 2000 and 1999, respectively. Had compensation cost for the stock 62 options been determined consistently with SFAS No. 123, the effect on the Company's net loss and basic and diluted loss per share would have been changed to the following pro forma amounts: One-Month ended January 31, Year Ended December 31, ------------ -- 2001 2000 1999 1998 ------------ ------------ ------------ ----------- Net loss, as reported.................... $(19,013,000) $(206,354,000) $(66,565,000) $(9,721,000) Pro forma effect of SFAS No. 123......... (1,065,000) (6,983,000) (4,100,000) (10,000) --- Net loss, pro forma...................... $(20,078,000) $(213,337,000) $(70,665,000) $(9,731,000) === Basic and diluted loss per share, as reported............ $ (0.47) $ (5.55) $ (5.49) $ (3.25) === Basic and diluted loss per share, pro forma.............. $ (0.49) $ (5.74) $ (5.83) $ (3.25) === The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions used for grants: weighted average risk-free interest rates of between 4.03% and 6.54%; expected dividend yield of zero percent; expected lives of four years for the options; and expected volatility of 70%. A summary of the status of the 1997 Plan, the 1999 Plan and the Director's Plan is presented in the table and narrative below: Range of Exercise Weighted Average Shares Prices Exercise Price ---------------- ---------------- ---------------- Outstanding at December 31, 1997......... 700,000 $ .04 ---------------- ---------------- Granted................................ 3,006,458 $ .04 - $.45 .15 Exercised.............................. (2,276,458) .06 Canceled............................... (195,000) .04 ---------------- ---------------- Outstanding at December 31, 1998......... 1,235,000 $ .27 ---------------- ---------------- Granted................................ 4,307,087 $1.00 - $39.94 8.46 Exercised.............................. (525,064) 2.29 Canceled............................... (670,502) 5.25 ---------------- ---------------- Outstanding at December 31, 1999......... 4,346,521 $ 7.37 ---------------- ---------------- Granted................................ 3,949,850 $5.50 - $35.31 19.11 Exercised.............................. (395,466) 2.78 Canceled.............................. (475,207) 12.48 ---------------- ---------------- Outstanding at December 31, 2000......... 7,425,698 $13.48 ---------------- ---------------- Granted................................ 42,500 $ 6.38 - $7.13 6.60 ---------------- ---------------- Exercised.............................. (25,604) .81 ---------------- ---------------- Canceled.............................. (45,287) 10.02 ---------------- ---------------- Outstanding at January 31, 2001.......... 7,397,307 $13.51 ---------------- ---------------- The weighted average fair value of options granted during the one- month transition period ended January 31, 2001 and calendar years 2000, 1999 and 1998 is $6.60, $19.11, $10.15 and $.02, respectively. Of the options outstanding at the one-month transition period ended January 31, 2001 and at years ended December 31, 2000, 1999 and 1998, 2,161,743, 2,093,252, 1,270,888 and 93,542 are vested, respectively. The Company repurchased zero, 50,066, 226,342 and 174,771 unvested shares issued upon early exercise of options during the one-month transition period ended January 31, 2001 and calendar years 2000, 1999 and 1998, respectively, upon the optionees' terminating employment with the Company. The following table contains information concerning outstanding and exercisable options as of January 31, 2001: 63 Number of Options Outstanding Weighted and Range Average Remaining Contractual Exercisable of Exercise Prices Life -- 427,662 $ 0.04-0.75 7.59 years 705,192 1.00 - 5.50 8.20 years 2,335,023 6.50 - 9.50 8.68 years 773,773 10.50 -16.00 9.29 years 617,250 16.13 -19.88 9.57 years 1,963,991 20.00-22.13 9.32 years 373,916 25.13 -35.31 9.12 years 200,500 35.75 - 39.94 8.84 years --------------------------- 7,397,307 ============================ 9. AOL RELATIONSHIP On September 13, 2000, the Company closed the Investment Agreement with AOL for $200 million. Under the terms of the Investment, the Company issued 2,711,861 shares of redeemable convertible preferred stock at $30.00 per share, 5,134,722 shares of common stock at $23.11 per share, 806,889 shares of which were subject to redemption as of December 31, 2000, two initial warrants to purchase an aggregate of 2,603,903 shares of the Company's common stock and two performance warrants to purchase an aggregate of up to 5,207,806 shares of common stock. The portion of common stock subject to redemption is shown as redeemable common stock on the Company's consolidated financial statements. The two performance warrants are contingent upon future performance. The AOL investment is part of a three-year Commercial Agreement, in which TiVo became an AOL TV programming partner, offering AOL TV subscribers access to features of TiVo's Personal TV Service. On January 30, 2001, the Company entered into the Second Amendment to the Investment Agreement with AOL, dated as of June 9, 2000, as amended by the First Amendment to the Investment Agreement, dated as of September 11, 2000. The Second Amendment provided for, among other things, an amendment to the Escrow Agreement, dated as of September 11, 2000, by and among the Company and AOL in which the Company had deposited a portion of the proceeds it received from AOL in connection with AOL's purchase of shares of the Company's Series A redeemable convertible preferred stock. Restricted Cash Under the terms of the Investment Agreement, the Company deposited $91.5 million of the proceeds received from the AOL investment and the associated interest income earned of $1.7 million in an escrow account as restricted cash. In accordance with the Commercial Agreement, $91.5 million of the restricted cash is intended to be used as subsidy payments to manufacturer(s) of set-top boxes that enable the TiVo Service. However, the restricted cash would be used in the event AOL exercises its put option to repurchase Series A redeemable convertible preferred stock and their portion of common stock subject to redemption. The terms of the put option are described below. The interest income earned on this restricted cash is shown on the consolidated balance sheets as deferred interest income on restricted cash until such time as the cash is no longer restricted. The First Amendment to the Escrow Agreement, dated as of January 30, 2001, authorized the release to the Company of $43.5 million in restricted funds previously held in escrow pursuant to the Escrow Agreement. Of this amount, on January 31, 2001, $16.5 million was paid to AOL for prepaid advertising as of expenses. Series A Redeemable Convertible Preferred Stock In September 2000, the Company issued 2,711,861 shares of Series A redeemable convertible preferred stock at $30.00 per share to AOL in exchange for $81.4 million, before issuance costs of $2.4 million. In January 2001, under the terms of the Second Amendment, 1,111,861 shares of Series A redeemable convertible preferred had their redemption feature removed. As of January 31, 2001, each of the 1,600,000 shares of the Series A redeemable convertible preferred stock is initially convertible into one share of common stock, subject to adjustment 64 for stock splits, dividends, combinations, reclassifications or similar transactions, as provided in the Company's Amended and Restated Certificate of Incorporation. The Series A redeemable convertible preferred stock is convertible upon AOL's option or is mandatorily convertible if the price of the Company's common stock exceeds $30.00 per share for 18 trading days in any 20 consecutive trading day period. Put Option Under the terms of the First Amendment to the Investment Agreement, if the set-top box launch of the Integrated Product does not occur by December 31, 2001, and AOL has not committed a material breach of the Commercial Agreement or the Company has breached its obligations with respect to the financial covenants, then AOL would have a put option pursuant to which AOL could require the Company to repurchase from AOL the number of shares of Series A redeemable convertible preferred stock which have an initial liquidation value of $91.5 million. If all the shares of Series A redeemable convertible preferred stock have an aggregate initial liquidation value of less than $91.5 million, then AOL could require the Company to repurchase the number of shares of common stock having a value equal to the difference between that aggregate initial liquidation value and $91.5 million. In the event that the set-top box launch occurred after the planned launch date, but prior to the exercise of the put option, the put option would immediately expire. The Second Amendment to the Investment Agreement modified the terms of AOL's put option with respect to the Series A redeemable convertible preferred stock held by AOL. Under the Second Amendment, the Company could be required to repurchase that number of shares of Series A redeemable convertible preferred stock having a liquidation value of $48.0 million, which is equal to the amount of the funds remaining in the restricted cash account, following AOL's release of $43.5 million of restricted cash in January 2001, excluding any interest earned on such funds. Series A Redeemable Convertible Preferred Stock Dividend Under the terms of the Investment Agreement between AOL and the Company, the Company issued Series A redeemable convertible preferred stock, with certain dividend and voting rights. Dividends on the Series A convertible preferred stock are calculated by multiplying the Non-Government Institutional Funds Simple Average Rate by $30.00 per share times the number of shares of Series A convertible preferred stock outstanding. Dividends are payable quarterly as declared by the Company's Board of Directors. Common Stock In September 2000, the Company issued 5,134,722 shares of common stock at $23.11 per share, of which 806,889 shares were subject to redemption as of December 31, 2000, to AOL in exchange for $118.6 million, before issuance costs of

$4.4 million. As of January 31, 2001 there were no shares of common stock subject to redemption under the Second Amendment. The portion of common stock subject to redemption was shown as redeemable common stock on the Company's consolidated financial statements. Initial Common Stock Warrants A and B In September 2000, in conjunction with AOL's investment, the Company issued two initial warrants to AOL to purchase common stock.The initial warrants were vested immediately and exercisable as follows: . Initial Warrant A - AOL was issued warrants to purchase 2,308,475 shares of common stock at $23.11 per share. The Company will expense the estimated fair value of the warrants of $13.5 million over 3 years, the term of the Commercial Agreement. The estimated fair value of the warrants was determined using the Black-Scholes option pricing model. The principal assumptions used in the computation are: 16-month term; fair market value at the date of issuance of $20.00 per share; a risk-free rate of return of 6.05%; dividend yield of zero percent; and a volatility of 70%. . Initial Warrant B - AOL was issued warrants to purchase 295,428 shares of common stock at $30.00 per share. The Company will expense the estimated fair value of the warrants of $2.5 million over 3 years, the term of the Commercial Agreement. The estimated fair value of the warrants was determined using the Black-Scholes option pricing model. The principal assumptions used in the computation are: 40-month term; fair market value at the date of issuance of $20.00 per share; a risk-free rate of return of 6.05%; dividend yield of zero percent; and a volatility of 70%. In January 2001, the Second Amendment to the Investment Agreement provided for the reduction in the exercise price of the two initial warrants. The Company issued amended warrants to AOL, which reduced the per 65 share exercise price of AOL's warrant to purchase 2,308,475 shares of common stock from $23.11 to $7.29, and reduced the per share exercise price of AOL's warrant to purchase 295,428 shares of common stock from $30.00 to $7.29. The initial warrants are vested immediately and exercisable as follows: . Initial Warrant A - AOL was issued warrants to purchase 2,308,475 shares of common stock at $7.29 per share. The Company will expense the estimated incremental fair value of the repriced warrants of $4.2 million over the remaining term of the Commercial Agreement (original term of 3 years). The estimated fair value of the warrants was determined using the Black-Scholes option pricing model. The principal assumptions used in the computation are: 9-month remaining life of the warrant; fair market value at the date of issuance of $7.13 per share; a risk- free rate of return of 6.05%; dividend yield of zero percent; and a volatility of 70%. . Initial Warrant B - AOL was issued warrants to purchase 295,428 shares of common stock at $7.29 per share. The Company will expense the estimated incremental fair value of the repriced warrants of $720,000 over the remaining term of the Commercial Agreement (original term of 3 years). The estimated fair value of the warrants was determined using the Black-Scholes option pricing model. The principal assumptions used in the computation are: 33-month remaining life of the warrant; fair market value at the date of issuance of $7.13 per share; a risk-free rate of return of 6.05%; dividend yield of zero percent; and a volatility of 70%. The expiration of Initial Warrant A is December 31, 2001 and Initial Warrant B expires December 31, 2003. The estimated incremental fair value of the warrants of $4.9 million was recorded as prepaid marketing expense (contra- equity) as of January 31, 2001. Performance Warrants In conjunction with AOL's investment in September 2000, the Company issued two performance warrants to AOL to purchase common stock. If AOL meets certain performance criteria, it may exercise these two performance warrants to purchase common stock. The warrants are exercisable as follows: . Performance Warrant A - AOL was issued warrants to purchase up to 2,603,903 shares of common stock at the exercise price described below. Performance Warrant A may be exercised within six months following the execution of the Launch Commitment. The Launch Commitment is a binding contractual commitment to market Integrated Service to have 1,500,000 activated users on Time Warner cable systems. . Performance Warrant B - AOL was issued warrants to purchase up to 2,603,903 shares of common stock at the exercise price described below. Performance Warrant B may be exercised within the six month period following the date on which AOL notifies the Company that 1,500,000 activated users of the Integrated Service existed at one time. Performance Warrants A and B shall be valued at the date that AOL meets the performance criteria. The exercise price for each performance warrant is equal to 90% of the average of the last reported trading prices of the Common Stock on the Nasdaq for the ten consecutive trading days preceding the date of AOL's Notice of Exercise. Performance Warrant A shall be valued at the date that TiVo receives a written binding contractual commitment from AOL for the set- top box launch to occur on cable television systems owned or controlled by Time Warner or its Affiliates in markets where TiVo has the potential to acquire at least 1.5 million activated users in the aggregate on such cable systems. Performance Warrant B shall be valued at the date that it is probable that AOL will meet the performance criteria of notifying the Company that 1,500,000 activated users of the Integrated Service existed at one time. If the Company were to value the performance warrants as of January 31, 2001, it would record the estimated value of the performance warrants of $9.0 million as prepaid marketing expense (contra-equity). If market conditions at the time that AOL earns the performance warrants are different than those at January 31, 2001 than the valuation of the warrants could significantly increase or decrease from the following calculated valuation: . Performance Warrant A - AOL would be issued warrants to purchase up to 2,603,903 shares of common stock at $6.57 per share. Performance Warrant A would be valued when it is earned by AOL. The Company would expense the estimated fair value of the warrants of $4.5 million over 3 years, the term of the Commercial Agreement. The estimated fair value of the warrants would be determined using the Black-Scholes option pricing model. The principal assumptions that would be used in the computation are: 6-month term; fair market value at the date of issuance of $7.13 per share; a risk-free rate of return of 6.05%; dividend yield of zero percent; and a volatility of 70%. 66 . Performance Warrant B - AOL would be issued warrants to purchase up to 2,603,903 shares of common stock at $6.57 per share. Performance Warrant B would be valued when it is probable of being earned by AOL. The Company would expense the estimated fair value of the warrants of $4.5 million over 3 years, the term of the Commercial Agreement. The estimated fair value of the warrants would be determined using the Black-Scholes option pricing model. The principal assumptions that would be used in the computation are: 6-month term; fair market value at the date of issuance of $7.13 per share; a risk-free rate of return of 6.05%; dividend yield of zero percent; and a volatility of 70%. Additionally, Performance Warrants A and B would also become exercisable immediately upon the occurrence of either a material breach of the Commercial Agreement by the Company or if the Company enters into a definitive agreement for a change of control of the Company. The performance warrants would expire on the earlier of September 11, 2003 or in the event that AOL commits a material breach of the Commercial Agreement. Since these warrants are contingent on AOL's performance or probable performance and the criteria have not been meet at this time, the Company has not recorded nor valued the performance warrants at this time in the financial statements. If market conditions at the time that AOL earns the performance warrants are different than those at January 31, 2001 than the valuation of the warrants could significantly increase or decrease from the above amount. AOL Advertising Insertion Order Under the terms of the Investment Agreement, the Company has agreed to pay $12.0 million to AOL for advertising media under the AOL Advertising Insertion Order. On September 13, 2000, $8.5 million of this amount was paid to AOL. The Company recorded this payment as prepaid marketing expense (contra equity). On January 30, 2001, the Company signed an additional media insertion order with AOL Time Warner for $21.5 million in advertising programs to promote the TiVo Service on AOL Time Warner properties. As of January 31, 2001, the Company recorded $18.5 million as prepaid marketing expense (contra equity) for payments and incurred $5.3 million of advertising expense. The balance of $21.7 million will be expensed as incurred in the future. Financial Convenants Under the terms of the Investment Agreement, the Company must maintain a positive net cash position in excess of $25.0 million at the end of each fiscal quarter. Net cash is defined as consolidated current assets (excluding deferred tax assets and escrowed funds) minus consolidated current liabilities (excluding deferred revenue, deferred interest income on escrowed funds, lifetime service subscriptions, sublessee prepaid rent and leasing obligations). The Company advises AOL monthly, on an informational basis, of the Company's net cash position. Per the agreement, if the Company falls below the $25.0 million net cash position at the end of a quarter, AOL has the right to exercise its put option. The Company's projections show that during the next 12 months the Company will fall below the net cash position without a substantial subscription revenue increase or significant non-subscription revenue contracts, cost containment measures or proceeds from equity sales. The Company is implementing plans pursuing all of these alternatives (see Note 1). The financial covenants shall terminate from the earlier of the date of the set-top box launch, (so long as such set-top box launch occurs before the planned launch date), the expiration of the put option or the day following the first anniversary of the planned launch date. 10. MARKETING AND MANUFACTURING AGREEMENTS Quantum Agreement In November 1998, the Company entered into a hard disk supply agreement with Quantum to allow the Company or certain third-party manufacturers (the buyer) to purchase up to an agreed-upon number of hard disk drives used in the personal video recorder and other devices that enable the TiVo Service. Under the terms of the agreement, the Company is entitled to a discounted purchase price if certain milestones are met. TiVo has agreed to share with Quantum a portion of the TiVo Service subscription fees it receives from the personal video recorders and other devices equipped with these hard disk drives. In addition, the Company issued a warrant to Quantum to purchase 324,325 shares of Series C preferred stock and 543,478 shares of Series D preferred stock at an exercise price of $0.01 per share. The Series C and D warrants vest and were exercisable upon the meeting of certain milestones which allow a discounted purchase price 67 on an agreed upon number of hard disk drives, or upon the closing of an initial public offering of the Company's common stock. As of December 31, 1998, Quantum had not vested in the warrants because the Company had not met the required performance milestones and therefore had not received the discounted price on its hard-disk drive purchases. In April 1999, the warrants to purchase Series C preferred stock vested and the Company recorded as a contra-equity account a prepaid marketing expense of $2.4 million related to the 324,325 shares of Series C preferred stock warrants. In September 1999, the warrants to purchase Series D preferred stock vested and the Company recorded as a contra-equity account a prepaid marketing expense of $8.7 million related to the 543,478 shares of Series D preferred stock warrants. The $2.4 million and the $8.7 million are being amortized as sales and marketing--related parties expense as the specified number of hard disk drives related to this agreement are shipped from Quantum. The fair value of the Series C and Series D vested warrants were estimated using the Black-Scholes option pricing model with the following assumptions: weighted average risk-free interest rate of 5.07%; expected dividend yield of zero percent; expected life of four years; expected volatility of 50%; and market price of preferred stock of $7.40 per share for Series C and $16.00 per share for Series D. These warrants were exercised and converted to common stock on a one-for-one basis upon the closing of the initial public offering in September 1999. The Company recognized zero, $670,000 and $10.4 million of sales and marketing--related parties expense for the one-month transition period ended January 31, 2001 and the years ended December 31, 2000 and 1999, respectively, related to these warrants. DIRECTV Agreement The Company entered into an agreement with DIRECTV to promote and offer support for the TiVo Service and products that enable the TiVo Service (the "DIRECTV Agreement"). Under the DIRECTV Agreement, DIRECTV will provide a variety of marketing and sales support to promote TiVo and the TiVo Service, collaborate on certain product development efforts and make a portion of the bandwidth capacity of DIRECTV's satellite network available to TiVo. In April 1999, the Company issued 1,852,329 shares of common stock in exchange for marketing services under the DIRECTV Agreement. The shares were non-forfeitable and were valued at an estimated fair value of $6.50 per share. The Company recorded prepaid marketing expenses classified as a contra-equity account related to the issuance of these shares of common stock of $12.0 million. These prepaid marketing expenses are expensed as the marketing services are provided over the two-year service period. The Company expensed $502,000, $6.0 million and $1.7 million during the one-month transition period ended January 31, 2001 and years ended December 31, 2000 and 1999, respectively. Additionally, in April 1999, the Company issued 1,128,867 shares of common stock in exchange for a $2.8 million promissory note due at the end of a three-year service period. The shares were valued at an estimated fair value of $6.50 per share. The $4.5 million of estimated fair value in excess of the balance of the note was recorded as a prepaid marketing expense contra-equity account. This $4.5 million prepaid marketing expense is amortized into sales and marketing--related parties expense as the bandwidth services are provided over the three year service period. DIRECTV may repay the note either by providing bandwidth capacity at no additional charge or by paying in cash. At the end of the three year service period, if specified milestones are not achieved, TiVo will have the right to repurchase some or all of these shares at $.001 per share. Amortization of the prepaid marketing expense and the note receivable began in calendar year 2000. For the one-month transition period ended January 31, 2001 and year ended December 31, 2000, $78,000 and $235,000 had been amortized, respectively, for providing bandwidth as repayment of the note receivable as sales and marketing--related parties expense. Also, $125,000 and $376,000 had been amortized for prepaid marketing expense as sales and marketing--related parties expense for the one-month transition period ended January 31, 2001 and year ended December 31, 2000, respectively. In addition to the equity consideration for DIRECTV's marketing services described above, DIRECTV will receive a percentage of TiVo's subscription revenues attributable to DIRECTV/TiVo subscribers. These amounts are expensed as earned and included in sales and marketing--related parties expense. In April 1999, TiVo sold 405,405 shares of Series F preferred stock to DIRECTV at $7.40 per share which were converted to common stock on a one-for-one basis upon the closing of the initial public offering in September 1999. On October 6, 2000 TiVo and DIRECTV signed a Warrant and Registration Rights Agreement. Under the terms of this agreement, DIRECTV has the right to purchase shares of TiVo common stock for each sale of the DIRECTV receiver with TiVo recorder. The strike price is calculated as the average daily closing price of a share of 68 common stock of the Company as reported on the Nasdaq for the five trading days of the month in which the warrants were earned. As of January 31, 2001, DIRECTV had earned the right to be issued common stock warrants to purchase 90,958 shares at exercises prices ranging from $5.58-$12.88. The fair value of each warrant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions used for grants: weighted average risk-free interest rates of between 5.13% and 5.85%; expected dividend yield of zero percent; expected lives of two years for the warrants; and expected volatility of 70%. The value of warrants of $173,000 was expensed as sales and marketing--related expense for year ended December 31, 2000 and $76,000 was expensed as sales and marketing--related partner expense for the one month period January 31, 2001, in the period earned. During the fourth quarter of 2000, TiVo, Philips, Sony, Hughes and DIRECTV signed nine-month Marketing Agreements to encourage the sales of the DIRECTV receiver with TiVo recorder. Under the terms of these agreements, TiVo recognizes a sales and marketing--related parties expense on each sale of a DIRECTV receiver with TiVo recorder to a consumer from an authorized DIRECTV dealer. All payments to dealers are made through DIRECTV. As of January 31, 2001, $1.2 million had been recognized as sales and marketing--related parties expense. Philips Agreement On March 31, 1999, the Company entered into an agreement with Philips for the manufacture, marketing and distribution of personal video recorders that enable the TiVo Service. Subject to certain limitations, this agreement grants Philips the right to manufacture, market and sell personal video recorders that enable the TiVo Service in North America. Philips was also granted the right to manufacture, market and sell personal video recorders in North America that incorporates both DIRECTV's satellite receiver and the TiVo Service. The Company also granted Philips a license to TiVo technology for the purpose of developing and manufacturing personal video recorders and other devices that enable the TiVo Service. The Company has agreed to pay Philips a subsidy on each personal video recorder that is manufactured and sold by Philips. The amount of the subsidy is periodically adjusted based on Philips manufacturing costs and selling prices. A portion of the subsidy amount paid to Philips is due when the personal video recorder is shipped. The remaining portion is due when the subscriber activates the TiVo Service. The Company will record the subsidy as sales and marketing-- related parties expense upon shipment of the personal video recorder by Philips. In addition to these amounts, the Company has agreed to pay Philips a fixed amount per month for each Philips-branded personal video recorder that has an active subscription to the TiVo Service. As of December 31, 1999, we incurred $2.2 million as sales and marketing--related parties expense. We paid this entire amount as of December 31, 2000. For the one-month transition period ended January 31, 2001 and year ended December 31, 2000, $1.5 million and $16.7 million had been recognized as sales and marketing--related parties expense, respectively. Of these amounts, as of April 30, 2001 $13.8 million had been paid. Under the terms of the agreement, Philips has committed to provide a specified amount of marketing activities related to Philips-branded personal video recorders that enable the TiVo Service in order to promote, market and sell their personal video recorder. In April 1999, Philips purchased 1,351,351 shares of Series H preferred stock for $7.40 per share which were converted to common stock on a one-for-one basis upon the closing of the initial public offering. Sony Agreement On August 6, 1999, the Company entered into a Letter of Intent with Sony for the manufacture, marketing and distribution of personal video recorders that enable the TiVo Service. Subject to certain limitations, this agreement grants Sony the right to manufacture, market and sell personal video recorders that enable the TiVo Service in North America. Sony was also granted the right to manufacture, market and sell personal video recorders in North America that incorporates both DIRECTV's satellite receiver and the TiVo Service. The Company also granted Sony a license to TiVo technology for the purpose of developing and manufacturing personal video recorders and other devices that enable the TiVo Service. The Company has agreed to pay Sony a subsidy on each personal video recorder that is manufactured and sold by Sony. The amount of the subsidy is periodically adjusted based on Sony's manufacturing costs and selling prices. The subsidy amount paid to Sony is due when the personal video recorder is shipped. The Company will record the subsidy as sales and marketing--related parties expense upon shipment of the personal video recorder by Sony. In addition to these amounts, the Company has agreed to pay Sony a calculated amount per month for each Sony-branded personal video recorder that has an active subscription to the TiVo Service. For the one-month 69 transition period ended January 31, 2001 and the year ended December 31, 2000, $737,000 and $20.5 million had been recognized as sales and marketing--related parties expense, respectively. Of these amounts, as of April 30, 2001 $10.0 million had been paid. Thomson Multimedia S.A. On May 31, 2000, the Company entered into a Letter of Intent with Thomson Multimedia S.A. for the manufacture, marketing and distribution of personal video recorders that enable the TiVo Service. Subject to certain limitations, this agreement grants Thomson the right to manufacture, market and sell personal video recorders that enable the TiVo Service in the United Kingdom and Ireland. TiVo intends to provide the TiVo Service in cooperation with Sky Broadcasting and other operators of TV broadcast services in the United Kingdom. The Company also agreed to pay Thomson a calculated amount per month for each sale of a Thomson manufactured personal video recorder. For the one-month transition period ended January 31, 2001 and year ended December 31, 2000, zero and $4.0 million had been recognized as sales and marketing--related parties expense, respectively. At April 30, 2001, the entire obligation had been paid. Hughes Network Systems On August 31, 2000 the Company entered into a Technology License Agreement with Hughes Network Systems for the manufacture and distribution of personal video recorders that enable the TiVo Service. Subject to certain limitations, the agreement grants Hughes the right to manufacture and sell personal video recorders that enable the TiVo Service in the United States. Hughes was also granted the right to manufacture and sell personal video recorders in the United States that incorporate both DIRECTV's satellite receiver and the TiVo Service. The Company also granted Hughes a license to TiVo technology for the purpose of developing and manufacturing personal video recorders and other devices that enable the TiVo Service. Creative Artists Agency Agreement In July 1999, the Company entered into an agreement with Creative Artists Agency, LLC, ("CAA"), for the marketing and promotional support of the personal video recorder. CAA was issued warrants to purchase 192,123 shares of Series I preferred stock for $10.41 per share. The Company expensed the estimated fair value of the warrants of $1.4 million over one year. The estimated fair value of the warrants was determined using the Black-Scholes option pricing model. The principal assumptions used in the computation are: one year term; deemed fair value at the date of issuance of $8.50 per share; a risk- free rate of return of 5.07%; dividend yield of zero percent; and a volatility of 50%. As a result of CAA's exercise of these warrants, upon the closing of the initial public offering, TiVo issued 67,122 shares of preferred stock. The 67,122 shares of preferred stock were converted to common stock on a one-for-one basis upon the closing of the initial public offering. 11. COMMITMENTS AND CONTINGENCIES Facilities Leases In October 1999, the Company entered into a new office lease with WIX/NSJ Real Estate Limited Partnership. The lease began on March 10, 2000 and has a seven-year term. Monthly rent is approximately $236,000 with built-in base rent escalations periodically throughout the lease term. In June 2000, the Company entered into an office lease for its UK office with Regus Business Center. The lease began on June 20, 2000 and has a six-month term. It was renewed in December 2000 for an additional six- month period. Monthly rent is approximately $21,000. The Company has also signed leases for sales offices in Beverly Hills, CA and in New York, NY. The Beverly Hills office lease has a three-year term and monthly rent is approximately $7,000. The New York office lease has a one-year term and monthly rent is approximately $5,000. Rent expense under operating leases was approximately $217,000, $2.4 million, $1.0 million and $619,000 for the one-month transition period ended January 31, 2001 and years ended December 31, 2000, 1999 and 1998, respectively. 70 Equipment Lease Line In March 1999, the Company entered into an equipment lease line for $2.5 million over the 12 months following the date of the lease. The annual interest rate is 7.25%, and the line is repayable over 36 months. The lessor received a warrant for 60,814 shares of the Company's Series B preferred stock at an exercise price of $1.26 per share. The Company expenses the estimated fair value of the warrants of $304,000 over the life of the lease. The estimated fair value of the warrants was determined using the Black-Scholes option pricing model. The principal assumptions used in the computation are: ten year term, deemed fair value at the date of issuance of $5.50 per share, a risk-free rate of return of 5.07%, dividend yield of zero percent and a volatility of 50%. As of January 31, 2001, $2.3 million of the available lease line has been used and has been accounted for as a capital lease. The current portion of the capital lease obligation, net of interest expense, at January 31, 2001, December 31, 2000 and 1999 is $796,000, $792,000 and $624,000, respectively. The unused equipment lease line expired February 2000. Future minimum lease payments as of January 31, 2001, by calendar year are as follows: Capital Year Facilities Leases Equipment Lease Total -- 2001.............................. $ 2,782,000 $ 795,000 $ 3,577,000 2002.............................. 2,959,000 620,000 3,579,000 2003.............................. 3,020,000 6,000 3,026,000 2004.............................. 3,076,000 -- 3,076,000 2005 and thereafter................ 6,979,000 -- 6,979,000 --- Total............................. $18,816,000 $1,421,000 $20,237,000 === Convertible Debt In April 1999, the Company entered into a secured convertible debenture purchase agreement with certain stockholders, which terminated on December 31, 1999. Under the terms of the agreement, TiVo could borrow up to $3.0 million at an interest rate of 4.67% per annum. The debentures delivered by TiVo for any loan made under this agreement were convertible into common stock on a one-for-one basis and secured by substantially all of the Company's assets other than intellectual property. In conjunction with the agreement, TiVo issued warrants to purchase 81,522 shares of common stock at an exercise price of $2.50 per share. Deferred financing costs of $341,000 were recorded using the estimated fair value of the warrants at the date of issuance. The estimated fair value of the warrants was determined using the Black-Scholes option pricing model. The principal assumptions used in the computation were: five year term; deemed fair value at the date of issuance of $5.50 per share; a risk free rate of return of 5.07%; dividend yield of zero percent; and a volatility of 50%. During the year ended December 31, 1999, the entire value of the warrants of $341,000 was expensed. The Company issued 81,522 shares of common stock as a result of the exercise of the warrants upon the closing of the initial public offering of the Company's common stock. Legal Matters In September 1999, TiVo received letters from Time Warner, Inc. and Fox Television stating that TiVo's personal television service exploits these companies' copyrights without the necessary licenses. The Company believes that the TiVo Service does not infringe on these copyrights and believes that there will not be an adverse impact as a result of these letters. 12. RETIREMENT PLAN In December 1997, the Company established a 401(k) Retirement Plan (the "Retirement Plan") available to employees who meet the plan's eligibility requirements. Participants may elect to contribute a percentage of their compensation to the Retirement Plan up to a statutory limit. Participants are fully vested in their contributions. The Company may make discretionary contributions to the Retirement Plan as a percentage of participant contributions, subject to established limits. The Company has not made any contributions to the Retirement Plan through January 31,2001. 71 13. ADOPTION OF STOCKHOLDER RIGHTS PLAN On January 9, 2001, TiVo's Board of Directors declared a dividend distribution of one Preferred Share Purchase Right ("Right") on each outstanding share of TiVo common stock ("the Rights Plan"). Subject to limited exceptions, the Rights will be exercisable if a person or group acquires 15% or more of the Company's common stock or announces a tender offer for 15% or more of the common stock, ("Acquiring Person"). Under certain circumstances, each Right will entitle shareholders to buy one -hundredth of a share of newly created Series B Junior Participating Preferred Stock of TiVo at an exercise price of $60.00 per Right. The TiVo Board will be entitled to redeem the Rights at $.01 per Right at any time before a person has acquired 15% or more of the outstanding common stock. The Rights are intended to enable all TiVo shareholders to realize the long-term value of their investment in the Company. They do not prevent a takeover, but should encourage anyone seeking to acquire TiVo to negotiate with the Board of Directors prior to attempting a takeover. The Rights Plan will expire in January 2011. The Rights are not being distributed in response to any specific effort to acquire control of TiVo. The Rights are designed to assure that all TiVo shareholders receive fair and equal treatment in the event of any proposed takeover of TiVo and to guard against partial tender offers, open market accumulations and other abusive tactics to gain control of TiVo without paying all shareholders a control premium. If a person becomes an Acquiring Person, each Right will entitle its holder to purchase, at the Right's then-current exercise price, a number of common shares of TiVo having a market value at that time of twice the Right's exercise price. Rights held by the Acquiring Person will become void and will not be exercisable to purchase shares at the bargain purchase price. If TiVo is acquired in a merger or other business combination transaction which has not been approved by the Board of Directors, each Right will entitle its holder to purchase, at the Right's then-current exercise price, a number of the acquiring company's common shares having a market value at that time of twice the Right's exercise price. The dividend distribution to establish the new Rights Plan will be payable to shareholders of record on January 31, 2001. The Rights will expire in January 2011. The Rights distribution is not taxable to shareholders. Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure None. 72 PART III Item 10. Directors and Executive Officers of the Company Certain information required by Part III has been omitted from this Transition Report on Form 10-K. This information is instead incorporated by reference to our definitive proxy statement (the "Proxy Statement"), which will be filed with the Securities and Exchange Commission in connection with our 2001 Annual Meeting of Stockholders. Identification of Executive Officers Information regarding our directors is incorporated by reference from our Proxy Statement. The information identifying our current executive officers is found under the caption "Executive Officers and Key Employees" in Part I hereof, and is also incorporated by reference into this Item 10. The information concerning TiVo's executive officers is incorporated by reference from our Proxy Statement. Identification of Directors The information concerning the Company's directors and nominees is incorporated by reference from our Proxy Statement. Compliance with Section 16 (a) of the Exchange Act The information concerning compliance with Section 16 (a) of the Exchange Act is incorporated by reference from the section entitled "Compliance with Section 16 (a) of the Exchange Act" in the Proxy Statement. Item 11. Executive Compensation The information required by this Item is incorporated by reference from our Proxy Statement under the heading "Executive Compensation and Other Information." Item 12. Security Ownership of Certain Beneficial Owners and Management The information required by this Item is incorporated by reference from our Proxy Statement under the headings "Proposal No. 1 Election of Directors" and "Security Ownership of Certain Beneficial Owners and Management." Item 13. Certain Relationships and Related Transactions The information required by this Item is incorporated by reference from our Proxy Statement under the heading "Certain Relationships and Related Transactions." 73 PART IV Item 14. Exhibits, Financial Statement Schedules, and Reports on Form 8-k (a) 1. INDEX TO FINANCIAL STATEMENTS See Item 8. (a) 3. EXHIBITS EXHIBIT NUMBER DESCRIPTION ------ ----------- 3.1 Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 of the registrant's Quarterly Report on Form 10-Q filed on November 14, 2000). 3.2 Amended and Restated Bylaws (incorporated by reference to Exhibit 3.4 of the registrant's Quarterly Report on Form 10-Q filed on November 15, 1999). 4.1++ Warrant and Registration Rights Agreement, dated as of October 6, 2000, by and between DIRECTV, Inc. (incorporated by reference to Exhibit 4.1 of the registrant's Annual Report on Form 10-K filed on April 2, 2001). 4.2 Stockholders and Registration Rights Agreement, dated as of June 9, 2000, between TiVo and America Online, Inc. (incorporated by reference to Exhibit 4.4 of the registrant's Quarterly Report on Form 10-Q filed on November 14, 2000). 4.3 Ninth Amended and Restated Investor Rights Agreement by and among TiVo and certain investors, dated as of August 6, 1999 (incorporated by reference to Exhibit 4.3 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 4.4 Certificate of Designations of the Series B Junior Participating Preferred Stock of TiVo (incorporated by reference to Exhibit 4.1 of the registrant's Current Report on Form 8-K/A filed on January 19, 2001). 4.5 Certificate of Correction to the Certificate of Designations of the Series B Junior Participating Preferred Stock of TiVo (incorporated by reference to Exhibit 4.2 of the Registrant's Current Report on Form 8-K/A filed on January 19, 2001). 10.1 Rights Agreement, dated as of January 16, 2001, between TiVo and Wells Fargo Shareowner Services, as Rights Agent (incorporated by reference to Exhibit 10.1 of the registrant's Current Report on Form 8-K/A filed on January 19, 2001). 10.2 First Amendment to Rights Agreement, dated as of February 20, 2001, between TiVo Inc. and Wells Fargo Shareowner Services, as Rights Agent (incorporated by reference to Exhibit 10. of the registrant's Current Report on Form 8-K filed on February 28, 2001). 10.3 Form of Indemnification Agreement between TiVo and its officers and directors (incorporated by reference to Exhibit 10.1 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.4 TiVo's 1999 Equity Incentive Plan and related documents (incorporated by reference to Exhibit 10.2 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.5 TiVo's Amended and Restated 1997 Equity Incentive Plan and related documents (incorporated by reference to Exhibit 10.3 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.6 TiVo's 1999 Employee Stock Purchase Plan and related documents (incorporated by reference to Exhibit 10.4 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.7 TiVo's 1999 Non-Employee Directors' Stock Option Plan and related documents (incorporated by reference to Exhibit 10.5 of the registrant's Annual Report on Form 10-K filed on March 30, 2000). 10.8+ Hard Disk Drive Supply Agreement between Quantum Corporation and TiVo, dated November 6, 1998 (incorporated by by reference to Exhibit 10.6 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.9 First Amendment to Hard Disk Supply Agreement between Quantum and TiVo, dated June 25, 1999 (incorporated by reference to Exhibit 10.20 of the registrant's Registration Statement on Form S-1 (SEC File No. 333- 83515)). 10.10+ Warrant Purchase and Equity Rights Agreement between 74 EXHIBIT NUMBER DESCRIPTION ------ ----------- Quantum Corporation and TiVo, dated November 6, 1998 and related documents (incorporated by reference to Exhibit 10.16 of the registrant's Registration Statement on Form (SEC File No. 333-83515)). 10.11+ Master Agreement between Philips Business Electronics B.V. and TiVo, dated March 31, 1999 (incorporated by reference to Exhibit 10.7 of the registrant's Registration Statement on Form S-1 (SEC File No. 333- 83515)). 10.12+ Marketing Agreement between DIRECTV, Inc. and TiVo, dated April 13, 1999 (incorporated by reference to Exhibit 10.8 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.13+ Agreement between NBC Multimedia, Inc. and TiVo, dated April 16, 1999 (incorporated by reference to Exhibit 10.9 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.14 Sublease Agreement between Verity, Inc. and TiVo, dated February 23, 1998 (incorporated by reference to Exhibit 10.10 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.15 Amendment to Sublease Agreement between Verity, Inc. and TiVo, dated November 1998 (incorporated by reference to Exhibit 10.11 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.16 Second Amendment to Sublease Agreement between Verity, Inc. and TiVo, dated March 1999 (incorporated by reference to Exhibit 10.12 of the registrant's Registration Statement on Form S-1 (SEC File No. 333- 83515)). 10.17 Consent of Landlord to Sublease between Verity, Inc. and TiVo, dated February 23, 1998 (incorporated by reference to Exhibit 10.13 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.18 Master Lease Agreement between Comdisco, Inc. and TiVo, dated February 12, 1999 (incorporated by reference to Exhibit 10.15 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.19 Warrant to Purchase Shares of Series A Preferred Stock issued to Randy Komisar, dated March 18, 1998 (incorporated by reference to Exhibit 10.17 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.20 Warrant Agreement between Comdisco, Inc. and TiVo, dated February 12, 1999 (incorporated by reference to Exhibit 10.18 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.21 Secured Convertible Debenture Purchase Agreement between TiVo and certain of its investors, dated April 8, 1999, and related documents (incorporated by reference to Exhibit 10.19 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.22 TiVo's 401(k) Plan, effective December 1, 1997 (incorporated by reference to Exhibit 10.21 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.23+ Tribune Media Services Television Listing Agreement between Tribune Media Services and TiVo, dated June 1, 1998 (incorporated by reference to Exhibit 10.22 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.24+ Amendment to the Data License Agreement between Teleworld Inc., and Tribune Media Services, Inc. between Tribune Media Services and TiVo, dated November 10, 1998 (incorporated by reference to Exhibit 10.23 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). 10.25 Lease Agreement between WIX/NSJ Real Estate Limited Partnership and TiVo, dated October 6, 1999 (incorporated by reference to Exhibit 10.24 of the Quarterly Report on Form 10-Q filed on November 15, 1999). 23.1 Consent of Independent Public Accountants 24.1 Power of Attorney (included in Part IV of this Form 10-K). 99.5 Form of Stock Option Grant used in connection with an option granted outside of TiVo's stock option plans and related documents (incorporated by reference to Exhibit 99.5 of the registrant's Registration Statement on Form S-1 (SEC File No. 333-83515)). ---------------------- + Confidential treatment granted as to portions of this exhibit. ++ Confidential treatment has been requested as to portions of this exhibit. 75 (b) REPORTS ON FORM 8-K The registrant filed the following reports on Form 8-K during the one-month transition period ended January 31, 2001: . Current Report on Form 8-K on January 17, 2001, regarding the execution of a Rights Agreement, dated as of January 16, 2001. . Amendment No. 1 to Current Report on Form 8-K on January 19, 2001, regarding the execution of a Rights Agreement, dated as of January 16, 2001, The registrant subsequently filed the following: . Current Report on Form 8-K on February 1, 2001, regarding the change in the registrant's fiscal reporting year-end from December31 to January 31. . Current Report on Form 8-K on February 14, 2001, regarding the announcement of the registrant's earnings for the fourth quarter and year ended December 31, 2000. . Current Report on Form 8-K on February 28, 2001, regarding an amendment to the Rights Agreement, dated as of January 16, 2001. . Current Report on Form 8-K on March 15, 2001, regarding the execution of an amendment to that certain Investment Agreement, dated as of June 9, 2000, as amended, by and between the registrant and America Online, Inc. and the execution of promotional agreements with America Online, Inc. and AOL Time Warner, Inc. . Current Report on Form 8-K on March 19, 2001, regarding the announcement of the registrant's earnings for the one-month transitional period ended January 31, 2001 in connection with the change in the registrant's fiscal reporting year-end. Trademark Acknowledgments TiVo is a registered trademark of TiVo, Inc. "Active Preview", "Can't Miss TV", "DIRECTIVO", Instant Replay logo, "Ipreview", Jump logo, "Life's too short for bad TV", "Network Showcase", "Personal TV", "Personal Video Recorder", "Primetime Anytime", "Season Pass", "See it, want it, get it", "The New Face of Television", "The way TV is meant to be", "Thumbs Down" (logo and text), "Thumbs Up" (logo and text), "TiVo Central", "TiVo" (logo, name and character), "TiVolution", "What you want, when you want it", and "You run the shows" are trademarks of the registrant. All other trademarks or trade names appearing in this report are the property of their respective owners. 76 SIGNATURES Pursuant to the requirements of Section 13 or 15(d) 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. TIVO INC. Date: April 30, 2001 By: /s/ Michael Ramsay ---------------------- Michael Ramsay Chief Executive Officer POWER OF ATTORNEY KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Michael Ramsay and David H. Courtney and each or any one of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated: Signature Title Date /s/ Michael Ramsay President, Chief Executive Officer and ------------------------- Chairman of the Board (Principal Executive April 30, 2001 Michael Ramsay Officer) /s/ David H. Courtney Senior Vice President of Finance and ------------------------- Administration and Chief Financial Officer April 30, 2001 David H. Courtney (Principal Financial and Accounting Officer) /s/ James Barton Senior Vice President of Research and ------------------------- Development, Chief Technical Officer and April 30, 2001 James Barton Director _________________________ Director Geoffrey Y. Yang /s/ Stewart Alsop ------------------------- Director April 30, 2001 Stewart Alsop /s/ Randy Komisar ------------------------- Director April 30, 2001 Randy Komisar ------------------------- Director Michael Homer /s/ Larry N. Chapman ------------------------- Director April 30, 2001 Larry N. Chapman /s/ Jan P. Oosterveld ------------------------- Director April 30, 2001 Jan P. Oosterveld 77 /s/ John S. Hendricks _________________________ Director April 30, 2001 John S. Hendricks /s/ David Zaslav _________________________ Director April 30, 2001 David Zaslav == 78