

ACTIVE NETWORK INC  
Form 10-Q  
May 03, 2013  
Table of Contents

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, DC 20549**

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**FOR THE QUARTERLY PERIOD ENDED March 31, 2013**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**FOR THE TRANSITION PERIOD FROM            TO**

**Commission file number: 001-35187**

**The Active Network, Inc.**

(Exact name of registrant as specified in its charter)

Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

**Delaware**  
**(State or Other Jurisdiction of**  
**Incorporation or Organization)**

**33-0884962**  
**(I.R.S. Employer**  
**Identification No.)**

**10182 Telesis Court**

**San Diego, California 92121**

**(Address of Principal Executive Offices) (Zip Code)**

**(858) 964-3800**

**(Registrant's Telephone Number, Including Area Code)**

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

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

As of April 29, 2013, the registrant had 61,389,649 shares of Common Stock (\$0.001 par value) outstanding.

**Table of Contents**

**The Active Network, Inc.**

**TABLE OF CONTENTS**

**PART I. FINANCIAL INFORMATION**

<u>Item 1. Condensed Consolidated Financial Statements (Unaudited)</u>	3
<u>Condensed Consolidated Balance Sheets as of March 31, 2013 and December 31, 2012</u>	3
<u>Condensed Consolidated Statements of Operations for the three months ended March 31, 2013 and 2012</u>	4
<u>Condensed Consolidated Statements of Comprehensive Loss for the three months ended March 31, 2013 and 2012</u>	5
<u>Condensed Consolidated Statements of Cash Flows for the three months ended March 31, 2013 and 2012</u>	6
<u>Notes to Condensed Consolidated Financial Statements</u>	7
<u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	17
<u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u>	24
<u>Item 4. Controls and Procedures</u>	25

**PART II. OTHER INFORMATION**

<u>Item 1. Legal Proceedings</u>	25
<u>Item 1A. Risk Factors</u>	25
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	37
<u>Item 3. Defaults Upon Senior Securities</u>	37
<u>Item 4. Mine Safety Disclosures</u>	37
<u>Item 5. Other Information</u>	37
<u>Item 6. Exhibits</u>	37

<b><u>SIGNATURES</u></b>	38
--------------------------	----

**Table of Contents****PART I. FINANCIAL INFORMATION****ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
THE ACTIVE NETWORK, INC.****CONDENSED CONSOLIDATED BALANCE SHEETS****(In thousands, except par value)**

	<b>March 31, 2013</b>	<b>December 31, 2012</b>
	(Unaudited)	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 107,039	\$ 58,493
Restricted cash	422	1,145
Registrations receivable	44,750	16,260
Accounts receivable, net	42,863	51,363
Inventories	4,298	4,809
Prepaid expenses and other current assets	11,084	8,922
<b>Total current assets</b>	<b>210,456</b>	<b>140,992</b>
Property and equipment, net	40,082	41,236
Software development costs, net	50,636	51,151
Goodwill	243,189	243,716
Intangible assets, net	56,974	62,806
Other long-term assets	2,508	2,569
<b>Total assets</b>	<b>\$ 603,845</b>	<b>\$ 542,470</b>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 5,997	\$ 8,174
Registration fees payable	124,254	61,272
Accrued expenses	43,581	38,865
Deferred revenue	74,815	66,846
Capital lease obligations, current portion	2,670	2,774
Other current liabilities	3,961	4,373
<b>Total current liabilities</b>	<b>255,278</b>	<b>182,304</b>
Capital lease obligations, net of current portion	1,805	2,462
Other long-term liabilities	5,864	6,192
Deferred tax liability	19,945	19,065
<b>Total liabilities</b>	<b>282,892</b>	<b>210,023</b>
Commitments and contingencies (Note 13)		
Stockholders' equity:		
Preferred stock, \$0.001 par value authorized, 100,000 shares; no shares issued and outstanding		
Common stock, \$0.001 par value authorized, 1,000,000; issued, 63,134 and 62,670; outstanding, 61,358 and 60,894	62	62
Treasury stock (at cost, 1,776 shares)	(11,959)	(11,959)

Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

Additional paid-in capital	657,981	653,694
Accumulated other comprehensive income	8,381	8,934
Accumulated deficit	(333,512)	(318,284)
<b>Total stockholders' equity</b>	<b>320,953</b>	<b>332,447</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 603,845</b>	<b>\$ 542,470</b>

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.

**Table of Contents****THE ACTIVE NETWORK, INC.****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS****(In thousands, except per share data)****(Unaudited)**

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
Net Revenue:		
Technology revenue	\$ 94,990	\$ 84,120
Marketing services revenue	11,021	10,318
Total net revenue	106,011	94,438
Cost of net revenue:		
Cost of technology revenue	49,046	45,655
Cost of marketing services revenue	1,191	1,316
Total cost of net revenue	50,237	46,971
Gross profit	55,774	47,467
Operating expenses:		
Sales and marketing	26,826	25,024
Research and development	21,176	21,209
General and administrative	16,508	16,544
Amortization of intangibles	4,454	5,692
Total operating expenses	68,964	68,469
Loss from operations	(13,190)	(21,002)
Interest income	15	25
Interest expense	(182)	(151)
Other income (expense), net	(553)	1,401
Loss before provision for income taxes	(13,910)	(19,727)
Provision for income taxes	1,318	611
Net loss attributable to common stockholders	\$ (15,228)	\$ (20,338)
Net loss per share attributable to common stockholders:		
Basic and diluted	\$ (0.25)	\$ (0.36)
Weighted-average shares used to compute net loss per share attributable to common stockholders:		
Basic and diluted	60,764	56,982

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.

**Table of Contents**

**THE ACTIVE NETWORK, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**

**(In thousands)**

**(Unaudited)**

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
Net loss	\$ (15,228)	\$ (20,338)
Other comprehensive income (loss):		
Foreign currency translation	(553)	886
Total other comprehensive income (loss)	(553)	886
Comprehensive loss	\$ (15,781)	\$ (19,452)

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.

**Table of Contents****THE ACTIVE NETWORK, INC.****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS****(In thousands)****(Unaudited)**

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
<b>Operating activities</b>		
Net loss	\$ (15,228)	\$ (20,338)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization of property and equipment	9,744	7,819
Amortization of intangible assets	5,655	7,157
Stock-based compensation expense	3,926	3,029
Allowance for doubtful accounts, net of write-offs	(151)	(55)
Deferred tax liability	898	640
Amortization of acquisition-related costs	(285)	(301)
Gain on contingent consideration		(1,086)
Change in operating assets and liabilities, net of effect of acquisitions:		
Restricted cash	723	
Registrations receivable	(28,490)	(23,609)
Accounts receivable	8,525	5,090
Inventories	511	(1,418)
Prepaid expenses and other assets	(2,118)	(995)
Accounts payable	(2,141)	(493)
Registration fees payable	62,982	37,769
Accrued expenses	7,942	3,145
Deferred revenue	8,114	11,319
Other liabilities	(390)	802
Net cash provided by operating activities	60,217	28,475
<b>Investing activities</b>		
Purchases of property and equipment	(6,130)	(5,849)
Capitalized software development	(5,388)	(5,285)
Cash paid for acquisitions, net of cash acquired		(38,037)
Net cash used in investing activities	(11,518)	(49,171)
<b>Financing activities</b>		
Proceeds from issuance of common stock	296	3,722
Payments on capital lease obligations	(760)	(1,561)
Payments of employee tax withholdings from equity transaction	(22)	
Proceeds from long-term debt		10,000
Repayment of long-term debt		(5,000)
Net cash provided by (used in) financing activities	(486)	7,161
Effect of exchange rates on cash	333	(150)
Net increase (decrease) in cash and cash equivalents	48,546	(13,685)
Cash and cash equivalents at beginning of period	58,493	108,699
Cash and cash equivalents at end of period	\$ 107,039	\$ 95,014



**Supplemental disclosures of cash flow information**

Cash paid during the period for interest	\$	153	\$	97
--	----	-----	----	----

Cash paid during the period for taxes	\$	106	\$	149
---------------------------------------	----	-----	----	-----

**Supplemental disclosures of noncash financing and investing activities**

Fixed asset purchases included in accounts payable	\$	603	\$	1,812
--	----	-----	----	-------

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.

**Table of Contents**

**The Active Network, Inc.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(Unaudited)**

**1. Business**

The Active Network, Inc., a Delaware corporation, and its subsidiaries ( Active or the Company ), provide cloud computing applications for activity and participant management that form an online network connecting a fragmented and diverse group of activity and event organizers with a large base of potential participants. The Company's technology platform transforms the way organizers manage their activities and events by automating online registrations and streamlining other critical management functions, while driving consumer participation to their activities and events.

**2. Basis of Presentation and Summary of Significant Accounting Policies**

*Principles of Consolidation*

The accompanying condensed consolidated financial statements include the accounts of Active and its wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

*Unaudited Interim Financial Information*

The accompanying condensed consolidated balance sheet as of March 31, 2013, the condensed consolidated statements of operations for the three months ended March 31, 2013 and 2012, the condensed consolidated statements of comprehensive loss for the three months ended March 31, 2013 and 2012 and the condensed consolidated statements of cash flows for the three months ended March 31, 2013 and 2012 are unaudited. The financial data and other information disclosed in these notes to the condensed consolidated financial statements related to the three months ended March 31, 2013 and 2012 are unaudited. The unaudited condensed consolidated interim financial statements and notes hereto have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the Company's financial condition, results of operations and comprehensive loss, and cash flows for the three months ended March 31, 2013 and 2012; however, they do not include all disclosures required by accounting principles generally accepted in the United States ( U.S. GAAP ). The results of operations for the three months ended March 31, 2013 are not necessarily indicative of the results to be expected for fiscal 2013 or for any other interim period or for any other future year. These unaudited condensed consolidated financial statements and notes hereto should be read in conjunction with the consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2012.

*Use of Estimates*

The preparation of the condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

**3. Recent Accounting Pronouncements**

In February 2013, the FASB issued an accounting standard update to require reclassification adjustments from other comprehensive income to be presented either in the financial statements or in the notes to the financial statements. This accounting standard became effective for the Company beginning in the first quarter of fiscal 2013, and its adoption did not have any impact on the Company's consolidated financial statements.

**4. Business Combination**

*Acquisition of StarCite, Inc.*

On December 30, 2011, the Company completed the acquisition of all of the outstanding shares of StarCite, Inc. ( StarCite ), a provider of a technology platform that delivers content and services for meetings and event planning to corporations, hotels, venues and meetings suppliers for

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

total consideration of \$57.4 million. The acquisition enables the Company to provide an integrated solution for the events space and broaden its customer base.

Total consideration comprised \$38.1 million in cash, 1,350,000 shares of common stock with a fair value of approximately \$18.4 million and 150,000 shares of contingently issuable common stock with an acquisition date fair value of approximately \$1.1 million to be issued in the event that the Company's shares of common stock did not close trading at or above \$15.00 per share for at least three consecutive days at any time during the sixty day period following the effective date of a registration statement filed to register the shares issued, pursuant to the agreement and plan of merger.

The Company's common stock traded at or above \$15.00 per share for three consecutive days subsequent to April 11, 2012, the effective registration date of the shares; accordingly the contingently issuable shares were not issuable to the former StarCite security holders. Immediately prior to the effective date of the registration statement, the estimated fair value of the contingent consideration was approximately \$38,000. The change in the estimated fair value of the contingent consideration was recorded in other income in the Company's condensed consolidated statements of operations and the remaining fair value was transferred from other current liabilities to equity.

The acquisition agreement included an initial escrow of approximately \$0.3 million in cash to cover potential expenses of the security holders agent and 300,000 common shares valued at approximately \$4.1 million, based on the closing price of the Company's common stock on the last trading day of fiscal 2011 to satisfy any claims under the indemnification provisions of the agreement for a period of 12 months following the acquisition date. During the year ended December 31, 2012, 20,320 escrow shares valued at approximately \$0.3 million were cancelled in order to satisfy indemnification claims related to the acquisition, 34,197 escrow shares valued at \$0.5 million were set aside by the Company as a share reserve to satisfy unresolved indemnification claims related to the acquisition and 245,483 shares were issued and released from escrow. The cancellation of the shares was recorded as a purchase price adjustment with a corresponding reduction to goodwill, as the estimated fair value of assets acquired and liabilities assumed was preliminary.

**Table of Contents**

The estimated fair values of assets acquired and liabilities assumed for the StarCite acquisition, are as follows (in thousands):

Cash	\$ 572
Restricted cash	692
Accounts receivable	14,566
Prepaid and other assets	1,301
Fixed assets	1,912
Goodwill	21,690
Intangible assets	36,500
Accounts payable	(1,398)
Accrued expenses	(5,459)
Deferred revenue	(11,286)
Capital lease obligations	(480)
Other liabilities	(528)
Unfavorable leases	(695)
 Total purchase price	 \$ 57,387

The acquisition was accounted for as a purchase business combination. The following table summarizes the identifiable intangible assets acquired as of the date of the acquisition (dollars in thousands):

	<b>Gross Amount at Acquisition Date</b>	<b>Amortization Period</b>
Trademarks	\$ 5,100	9 years
Customer relationships	17,300	9 years
Customer contracts	6,800	3 years
Complete technology	6,500	9 years
Non-compete agreements	800	1 year
 Total intangible assets	 \$ 36,500	

Goodwill of \$21.7 million, none of which is deductible for tax purposes, represents the excess of the purchase price over the estimated fair value assigned to tangible and identifiable intangible assets acquired and liabilities assumed from StarCite. The carrying amount of goodwill is allocated to the technology operating segment of the Company.

**5. Fair Value Measurements**

FASB guidance for fair value measurements clarifies that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the guidance establishes a three-tier value hierarchy, which prioritizes the inputs used in measuring fair value as follows: (Level 1) observable inputs such as quoted prices in active markets; (Level 2) inputs other than the quoted prices in active markets that are observable either directly or indirectly; and (Level 3) unobservable inputs in which there is little or no market data, which require the Company to develop its own assumptions. This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value.

The Company's financial assets and liabilities that are measured at fair value on a recurring basis were insignificant at March 31, 2013 and December 31, 2012.

The Company did not have any transfers in or out of Level 1 or Level 2 during the three months ended March 31, 2013.

**6. Accounts Receivable and Allowance for Doubtful Accounts**

Accounts receivable, net, by category is as follows (in thousands):

	<b>March 31, 2013</b>	<b>December 31, 2012</b>
Accounts receivable	\$ 43,702	\$ 52,353
Less: Allowance for doubtful accounts	(839)	(990)
<b>Accounts receivable, net</b>	<b>\$ 42,863</b>	<b>\$ 51,363</b>

Allowances for doubtful accounts are established based on various factors including individual accounts receivable over a specific aging, historical payments, and current economic trends. The Company reviews its allowances by assessing individual accounts receivable over a specific aging and amount, and all other balances on a pooled basis based on historical collection experience. Accounts receivable are written off on a case-by-case basis, net of any amounts that may be collected.

**Table of Contents****7. Property and Equipment**

Property and equipment by category is as follows (in thousands):

	March 31, 2013	December 31, 2012
Computer and software	\$ 83,347	\$ 80,521
Furniture and fixtures	10,304	10,307
Leasehold improvements	6,534	6,485
Property and equipment	100,185	97,313
Less: Accumulated depreciation	(60,103)	(56,077)
Property and equipment, net	\$ 40,082	\$ 41,236

Depreciation expense was \$4.1 million and \$3.8 million for the three months ended March 31, 2013 and 2012, respectively.

Included in fixed assets are \$14.5 million of equipment under capital leases at March 31, 2013 and December 31, 2012. Accumulated amortization of assets under capital leases totaled \$8.5 million and \$7.9 million at March 31, 2013 and December 31, 2012, respectively.

**8. Software Development Costs**

Capitalized software development costs are as follows (in thousands):

	March 31, 2013	December 31, 2012
Software development costs	\$ 94,276	\$ 89,221
Less: Accumulated amortization	(43,640)	(38,070)
Software development costs, net	\$ 50,636	\$ 51,151

Amortization expense was \$5.7 million and \$4.0 million for the three months ended March 31, 2013 and 2012, respectively.

**9. Goodwill**

The change in the carrying amount of goodwill for the three months ended March 31, 2013 is as follows (in thousands):

	Technology	Marketing Services	Total
Balance at December 31, 2012	\$ 230,998	\$ 12,718	\$ 243,716
Effect of exchange rate changes	(527)		(527)
Balance at March 31, 2013	\$ 230,471	\$ 12,718	\$ 243,189

The Company performs its goodwill impairment test annually in its fourth fiscal quarter, and more frequently if indicators of impairment are present. During the first quarter of 2013, due to the decline in the Company's market capitalization, the Company considered whether circumstances indicated that there is an other than temporary impairment in goodwill. The Company does not believe that an event or change in circumstance had occurred that would more likely than not reduce the fair market value of any reporting unit below its carrying amount and

therefore an interim impairment analysis was not triggered.

### 10. Intangible Assets

Intangible assets are amortized using a combination of straight-line and accelerated methods based on the expected cash flows from the assets.

Certain of the Company's intangible assets were recorded in foreign currencies and both the gross carrying amounts and accumulated amortization are subject to foreign exchange adjustments. The carrying values of amortized intangible assets are as follows (in thousands):

	March 31, 2013			December 31, 2012		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Intellectual property	\$ 24,521	\$ (15,085)	\$ 9,436	\$ 24,800	\$ (14,124)	\$ 10,676
Non-compete agreements	2,098	(1,007)	1,091	2,098	(832)	1,266
Customer relationships	44,132	(12,862)	31,270	44,132	(11,256)	32,876
Trade names	13,251	(4,495)	8,756	13,385	(4,113)	9,272
Customer contracts	28,782	(22,361)	6,421	46,888	(38,172)	8,716
Intangible assets	\$ 112,784	\$ (55,810)	\$ 56,974	\$ 131,303	\$ (68,497)	\$ 62,806

**Table of Contents**

Amortization of intellectual property is recorded in cost of revenue, while the amortization of other acquired intangible assets is included in operating expenses. The following table summarizes the classification of amortization expense of acquired intangible assets for the periods indicated (in thousands):

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2013</b>	<b>2012</b>
Cost of technology revenue	\$ 1,187	\$ 1,348
Cost of marketing services revenue	14	117
Operating expenses	4,454	5,692
Total amortization of acquired intangible assets	\$ 5,655	\$ 7,157

**11. Accrued Expenses**

The following table presents the detail of accrued expenses for the periods presented (in thousands):

	<b>March 31,</b>	<b>December 31,</b>
	<b>2013</b>	<b>2012</b>
Accrued compensation	\$ 20,302	\$ 14,569
Sales and other foreign taxes	6,787	6,065
Accrued penalties (Note 13)	1,504	1,507
Accrued rebates	3,892	4,234
Other accrued expenses	11,096	12,490
Accrued expenses	\$ 43,581	\$ 38,865

As of March 31, 2013, accrued compensation was comprised of accrued salaries and accrued personal time off of \$13.3 million, accrued bonuses of \$4.0 million, accrued self-insurance of \$1.2 million, accumulated employee deductions for stock purchase under the Company's Employee Stock Purchase Plan of \$1.4 million, amounts payable for 401K contributions of \$0.3 million and amounts payable under the Deferred Compensation plan of less than \$0.1 million. As of December 31, 2012, accrued compensation was primarily comprised of accrued salaries and accrued personal time off of \$9.1 million, accrued bonuses of \$3.1 million, accrued self-insurance of \$1.2 million, accumulated employee deductions for stock purchase under the Company's Employee Stock Purchase Plan of \$1.1 million, and amounts payable for 401K contributions of less than \$0.1 million.

**12. Long-Term Debt**

In December 2011, the Company entered into a five-year, senior secured revolving credit facility, with certain institutional lenders, for an initial aggregate principal amount of \$50 million (the "Credit Facility"). The Company has the ability to issue up to \$15 million for letters of credit and \$5 million for swing line loans under the Credit Facility. The Credit Facility also includes an "accordion" feature which allows the Company, subject to certain terms and conditions, to increase the lending commitments by up to \$25 million. The Credit Facility has a maturity date of December 16, 2016, but the outstanding amounts may be prepaid at any time without penalty or premium (except for certain customary break funding payments in connection with LIBOR loans) and is available to fund acquisitions and ongoing operations.

In July 2012, the Company amended the Credit Facility by increasing the aggregate principal amount to \$100 million, increasing the ability to issue letters of credit by up to \$25 million and increasing the "accordion" feature by up to \$50 million.

Any advance under the Credit Facility will accrue interest at rates per annum that are equal to, based on certain conditions, either (a) 1.5% above the applicable LIBOR rate, or (b) 0.5% above (i) the greatest of (x) the prime rate, (y) the federal funds effective rate plus 0.5% or (z) a daily rate equal to one-month LIBOR plus 1.00%. The unused portion of the Credit Facility will also be subject to an unused fee that will be calculated at a per annum rate of 0.25%. The interest rate under the Credit Facility was 1.78% and 1.81% as of March 31, 2013 and



December 31, 2012, respectively.

Under the Credit Facility, the Company is required to comply with certain financial covenants and ratios, including a quarterly consolidated leverage ratio of consolidated funded indebtedness to EBITDA of not more than 2.5 to 1.0 and a quarterly consolidated fixed charge coverage ratio of not less than 1.5 to 1.0. Substantially all of the Company's tangible and intangible assets are considered collateral security under the secured Credit Facility. As of March 31, 2013 and December 31, 2012, the Company was in compliance with all specified financial covenants and ratios.

The Company had no amount outstanding under the Credit Facility as of March 31, 2013 and December 31, 2012. Amounts available under the Credit Facility were \$94.9 million and \$93.9 million as of March 31, 2013 and December 31, 2012, respectively, net of \$5.1 million and \$6.1 million in outstanding letters of credit, respectively.

### **13. Commitments and Contingencies**

#### ***Operating Leases***

The Company leases its office and datacenter facilities under non-cancelable leases that expire at various times through 2021. The Company is also responsible for certain real estate taxes, utilities and maintenance costs on its office facilities. Rent expense was approximately \$3.5 million and \$3.4 million for the three months ended March 31, 2013 and 2012, respectively.

#### ***Guarantees***

The Company enters into arrangements with third-party customers to guarantee performance by the Company. The Company may provide a corporate guarantee, irrevocable letter of credit, surety bond or any other form of guarantee acceptable to the third-party customer. As of March 31, 2013 and December 31, 2012, the Company had guarantees of \$5.1 million and \$7.2 million, respectively.

## **Table of Contents**

### ***Self-Insured Health Plan***

The Company is generally self-insured for losses and liabilities related to health benefits. The Company's self-insurance accruals are based on estimates, and while the Company believes that the amounts accrued are adequate, the ultimate claims may be in excess of the amounts provided. The Company's accrued health benefits liability was \$1.2 million at March 31, 2013 and December 31, 2012, respectively.

### ***Sales and Use Tax***

The Company accrues for sales and use taxes in certain states. The Company estimates a potential liability in states where it had not previously remitted these taxes. The Company has established a reserve for estimated claims from states where sales and use tax had not been remitted of \$5.6 million and \$5.1 million at March 31, 2013 and December 31, 2012, respectively.

### ***Indemnification***

The Company enters into indemnification arrangements in the ordinary course of business. Pursuant to these arrangements, the Company indemnifies, holds harmless and agrees to reimburse the indemnified parties for losses suffered or incurred by the indemnified party, in connection with any trade secret, copyright, patent or other intellectual property infringement claim by any third-party with respect to its technology. The term of these indemnification agreements is generally perpetual any time after the execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these agreements is not determinable because it involves claims that may be made against the Company in the future, but have not yet been made. The Company has not incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

The Company has entered into indemnification agreements with its directors and officers that may require the Company to indemnify its directors and officers against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct of the individual.

### ***Penalty Accruals***

The Company maintains a liability of \$1.5 million at March 31, 2013 and December 31, 2012, as a result of the potential exposure for penalties from its customers for various technical disruptions.

## **14. Legal Proceedings**

From time to time, the Company is involved in disputes, litigation and other legal actions. The Company records a charge equal to at least the minimum estimated liability for a loss contingency only when both of the following conditions are met: (i) information available prior to issuance of the financial statements indicates that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements, and (ii) the range of loss can be reasonably estimated. The actual liability in any such matters may be materially different from the Company's estimates, which could result in the need to adjust the liability and record additional expenses. The Company is not aware of any pending or threatened litigation that is reasonably likely to have a material adverse effect on our results of operations, financial position or liquidity.

### ***Monster Litigation***

On December 16, 2011, Monster Worldwide, Inc. ( "Monster" ) filed a complaint in the United States District Court for the Southern District of New York against a former Monster employee and current Active executive (the "Active Executive" ). The complaint asserted various claims contending that the Active Executive violated the non-solicitation terms in certain of the Active Executive's agreements with Monster by soliciting and hiring two former technology employees of Monster who are current employees of the Company.

On February 7, 2012, Monster filed an amended complaint to add additional allegations, and on June 7, 2012, Monster filed a second amended complaint to add allegations and claims against (1) Active; and (2) a second former Monster employee and current Active employee. The claims against this employee were similar to the claims alleged in the original complaint against the Active Executive and arose from alleged violations of this second employee's non-solicitation agreement with Monster claiming the second employee solicited for hire a third former employee of Monster that is a current employee of the Company. The Company was added as a defendant to the complaint resulting from allegations by Monster that it interfered with the non-solicitation agreements by hiring the three former employees of Monster. Additionally, the second amended complaint included a new claim for breach of fiduciary duty against the Active Executive.

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

On February 27, 2013, the parties entered into a settlement and general release agreement, releasing all claims against Active and its employees in exchange for a cash settlement of \$1.0 million. The Company's insurer paid \$0.8 million of the total settlement. As a result, the Company recorded the net settlement expense of \$0.2 million in general and administrative expenses.

### 15. Stock-Based Compensation

The Company's stock-based compensation is comprised of stock options, stock options with market conditions ( Market Stock Options ), restricted stock units with service conditions ( RSUs ), restricted stock units with market conditions ( MSUs ), and performance-based restricted stock units ( PRSUs or Performance RSUs ) which are issued under our 2002 and/or 2011 equity incentive plan, as well as common stock issued under the Employee Stock Purchase Plan ( ESPP ).

#### *Stock Options*

The Company granted no stock options during the three months ended March 31, 2013. Stock option activity for the three months ended March 31, 2013 is as follows:

<b>Stock Options</b>	<b>Number of Shares Underlying Options</b>	<b>Weighted-Average Exercise Price</b>
Outstanding at December 31, 2012	8,369,021	\$ 5.78
Granted		
Exercised	(145,444)	2.03
Cancelled or expired	(287,695)	11.73
Outstanding at March 31, 2013	7,935,882	\$ 5.64

**Table of Contents**

There are 701,010 Market Stock Options outstanding as of March 31, 2013.

The fair value of stock options granted that contain only a service condition as a requirement for vesting, was estimated on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions:

	Three Months Ended	
	2013	March 31, 2012
Volatility	51.8-52.7%	
Expected dividend yield		
Risk-free rate	0.8-1.1%	
Expected term (in years)	5.0	

The fair value of Market Stock Options was estimated on the date of grant using the Monte Carlo Simulation valuation model, which estimates the potential outcome of reaching the market condition based on simulated future stock prices, with the following assumptions: contractual life of six years; expected volatility of 47% and risk free interest rate of 0.74%. These options vest over four years and are exercisable if specified stock prices are achieved.

Total unrecognized compensation cost, adjusted for estimated forfeitures, related to non-vested stock options is approximately \$12.4 million as of March 31, 2013 and is expected to be recognized over a weighted-average period of 2.3 years.

**Restricted Stock Units**

RSU and PRSU activity for the three months ended March 31, 2013 is as follows:

RSUs and PRSUs	Number of RSUs	Weighted-Average Grant Date Fair Value of RSUs	Number of PRSUs	Weighted-Average Grant Date Fair Value of PRSUs
Unvested at December 31, 2012	1,786,301	\$ 13.97	742,882	\$ 12.14
Granted	487,500	5.60		
Released	(323,963)	17.04		
Cancelled or expired	(44,747)	12.15		
Unvested at March 31, 2013	1,905,091	\$ 11.60	742,882	\$ 12.14

The fair value of RSUs and PRSUs is based on the stock price on the date of grant. The RSUs vest over a four year period following the date of grant. The PRSUs vest over a two to four year period following the date of grant, subject to achievement of performance objectives and the participant's continued service through the applicable vesting dates.

The number of PRSUs granted in the table above represents the maximum number of awards that could ultimately be issued if certain Company financial targets, as defined under the agreements, are achieved. The shares, if any, will be issued on a one-for-one basis following the end of the applicable performance and service periods. 450,522 PRSUs can be settled in cash or shares at the election of the Company. Compensation cost associated with the PRSUs is recognized when the performance metrics are determined to be probable of achievement over the requisite service periods.

At March 31, 2013, the remaining unrecognized compensation cost, adjusted for estimated forfeitures, related to RSUs is \$19.8 million and is expected to be recognized over a weighted-average period of 2.9 years. The remaining unrecognized compensation cost associated with the maximum number of PRSUs that could ultimately be issued of \$8.5 million is expected to be recognized if and when the performance conditions are estimated to be probable of achievement over the remaining service period.

**Market Stock Units**

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

MSU activity for the three months ended March 31, 2013 is as follows:

MSUs	Number of MSUs	Weighted- Average Grant Date Fair Value of MSUs
Unvested at December 31, 2012		\$
Granted	280,000	5.60
Released		
Cancelled or expired	(30,000)	5.61
Unvested at March 31, 2013	250,000	\$ 5.60

The fair value of MSUs is measured using the Monte Carlo simulation model which estimates the potential outcome of reaching the market condition based on simulated future stock prices and is recognized over the requisite service period. The MSUs vest over a three to four year period following the date of grant, subject to achievement of market performance objectives and the participant's continued service through the applicable vesting dates.

**Table of Contents**

At March 31, 2013, the remaining unrecognized compensation cost, adjusted for estimated forfeitures, related to MSUs is \$1.7 million and is expected to be recognized over a weighted-average period of 2.6 years.

***Employee Stock Purchase Plan***

The Company issued no shares during the three months ended March 31, 2013 under the Company's 2011 Employee Stock Purchase Plan (2011 ESPP). As of December 31, 2012, 244,947 shares were issued with a weighted average fair value of \$7.80.

The fair value of each purchase option under the 2011 ESPP is estimated at the beginning of each six-month offering period using the Black-Scholes model with the following weighted-average assumptions:

	<b>Year ended December 31, 2012</b>
Volatility	43.1-44.5%
Expected dividend yield	
Risk-free rate	0.1-0.2%
Expected term (in years)	0.5

As of March 31, 2013, total unrecognized compensation cost related to non-vested stock-based compensation arrangements granted under the 2011 ESPP was less than \$0.1 million, which is expected to be recognized over a weighted-average period of less than six months.

***Stock-Based Compensation Expense***

The following table presents the effects of stock-based compensation expense related to stock-based awards to employees in the Company's condensed consolidated statements of operations during the periods presented (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
Cost of revenue	\$ 165	\$ 60
Sales and marketing	750	696
Research and development	599	452
General and administrative	2,412	1,821
<b>Total stock-based compensation</b>	<b>\$ 3,926</b>	<b>\$ 3,029</b>

The components of stock-based compensation expense were as follows (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
Stock options	\$ 1,469	\$ 2,168
Restricted stock	2,257	655
PRSUs	(21)	36
MSUs	118	
ESPP	103	170
<b>Total stock-based compensation</b>	<b>\$ 3,926</b>	<b>\$ 3,029</b>

**16. Net Loss Attributable to Common Stockholders**

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

Basic net loss per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. Under the two-class method, basic net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding during the period.

The following tables present the calculation of basic and diluted net loss per share attributable to common stockholders (in thousands, except per share data):

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
<b>Net loss per share:</b>		
Net loss attributable to common stockholders	\$ (15,228)	\$ (20,338)
<b>Weighted-average common shares outstanding:</b>		
Basic and diluted	60,764	56,982
<b>Net loss per share attributable to common stockholders:</b>		
Basic and diluted	\$ (0.25)	\$ (0.36)

**Table of Contents**

Potentially dilutive securities not included in the calculation of diluted net loss per share because their effect would have been anti-dilutive for the periods presented are as follows:

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
Options to purchase common stock and common stock subject to repurchase	7,643,709	11,168,550
Restricted stock	2,202,881	697,012
Employee stock purchase plan shares	172,466	72,996
Market stock units	169,417	
Common stock warrants		634
	10,188,473	11,939,162

**17. Segment Information**

The Company's Chief Executive Officer who is considered to be the chief operating decision maker ( CODM ) reviews financial information presented on a consolidated basis, accompanied by information about operating segments for purposes of making operating decisions and assessing financial performance. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the CODM in deciding how to allocate resources and in assessing performance.

The Company determined its operating segments to be technology and marketing services. Technology derives substantially all of its revenue from technology fees, software licensing, installation, training, maintenance, and hosting subscriptions. Marketing services derives substantially all of its revenue from online services, field marketing services, and membership programs.

The Company evaluates the performance of its operating segments based on net revenues and operating income before interest, taxes, depreciation, amortization and stock-based compensation expense.

The Company does not allocate most of its assets, depreciation and amortization expense, stock-based compensation expense, interest income, interest expense or income tax expense by segment. Accordingly, the Company does not report such information.

Summarized information by segment is as follows (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
Net revenue by segment:		
Technology	\$ 94,990	\$ 84,120
Marketing services	11,021	10,318
Total net revenue	\$ 106,011	\$ 94,438

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
Segment operating income before depreciation, amortization, stock-based compensation expense and unallocated corporate costs:		
Technology	\$ 16,314	\$ 6,052
Marketing services	1,406	2,309
	17,720	8,361



## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

Total segment operating income before depreciation, amortization, stock-based compensation expense and unallocated corporate costs		
Depreciation and amortization	(15,399)	(14,976)
Stock-based compensation expense	(3,926)	(3,029)
Unallocated corporate costs	(11,585)	(11,358)
Loss from operations	\$ (13,190)	\$ (21,002)

The Company allocates its net revenue to geographic regions based on the customer's location. The following tables set forth net revenue and long-lived assets by geographic region (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2013</b>	<b>2012</b>
Net revenue:		
North America	\$ 102,764	\$ 91,222
Europe and other	3,247	3,216
Total net revenue	\$ 106,011	\$ 94,438

**Table of Contents**

	March 31, 2013	December 31, 2012
<b>Assets:</b>		
North America	\$ 598,083	\$ 537,220
Europe and other	5,762	5,250
Total assets	\$ 603,845	\$ 542,470
<b>Long-lived assets:</b>		
North America	\$ 391,556	\$ 399,647
Europe and other	1,833	1,831
Total long-lived assets	\$ 393,389	\$ 401,478

**18. Income Taxes**

The effective tax rate of (9.5)% for the three months ended March 31, 2013 differs from the statutory rate primarily due to state taxes, foreign taxes, the increase in the deferred tax liability from the amortization of tax deductible goodwill, the increase in the valuation allowance and discrete items recorded in the period.

The Company has uncertain tax positions of \$1.5 million and \$1.3 million as of March 31, 2013 and December 31, 2012, respectively. The increase in the uncertain tax position principally relates to the denial of amortization deductions and withholding taxes asserted in connection with the examination of one of the Company's foreign subsidiaries. The Company's policy for recording interest and penalties on uncertain tax positions is to record such items as a component of income tax expense. Accrued interest and penalties of \$0 million were recorded at March 31, 2013 and December 31, 2012, respectively.

The Company reduces the deferred tax asset resulting from future tax benefits by a valuation allowance if, based on the weight of the available evidence, it is more likely than not that some portion or all of these deferred taxes will not be realized. The timing of the reversal of deferred tax liabilities associated with tax deductible goodwill is not certain and thus not available to assure the realization of deferred tax assets. Similarly, state deferred tax liabilities in excess of state deferred tax assets are not available to ensure the realization of federal deferred tax assets. After consideration of these limitations associated with deferred tax liabilities, the Company has deferred tax assets in excess of deferred tax liabilities for the periods presented. As the Company has no history of generating book income, the ultimate future realization of these excess deferred tax assets is not more likely than not and thus subject to a valuation allowance. Accordingly, the Company has established a valuation allowance against its domestic deferred tax assets. A valuation allowance has not been recorded against the Company's foreign deferred tax assets as there are sufficient future taxable temporary differences in foreign jurisdictions to assure the realization of foreign deferred tax assets. Deferred tax assets of \$0.7 million are included in prepaid expenses and other current assets on the balance sheet at March 31, 2013 and December 31, 2012.

The Company conducts business globally, and as a result, is subject to taxation in the United States and various state jurisdictions and foreign jurisdictions. In the normal course of business, the Company is subject to examination by taxing authorities in many of the jurisdictions in which the Company operates. Effectively, all of the Company's historical tax filings are subject to examination by the Internal Revenue Service and various state and foreign jurisdictions due to the generation of net operating loss carry forwards.

It is possible that new tax exams may commence and that other issues may be effectively settled. However, the Company is unable to make a reasonably reliable estimate as to when or if cash settlements with taxing authorities may occur. Although audit outcomes and the timing of potential audit payments are subject to uncertainty, the Company does not anticipate that the resolution of these tax matters or any events related thereto will result in a material adverse change to its consolidated financial position, results of operations or cash flows.

**19. Related Party Transactions**

ESPN Online Investments, Inc. (ESPN) is a significant common stockholder in the Company. The Company also sells its services to ESPN and its affiliates. The Company recorded net revenues from ESPN and its affiliates of less than \$0.1 million for the three months ended March 31, 2013 and 2012, respectively.

ESPN is a wholly-owned subsidiary of The Walt Disney Company (Disney). The Company entered into an online services agreement with Disney to provide registration and advertising. The Company recorded net revenues from Disney of \$0.4 million and \$0.2 million for the three months ended March 31, 2013 and 2012, respectively.

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

In August 2006, the Company entered into a Master Services Agreement and certain other related agreements with the United States Tennis Association ( USTA ) as amended in December 2010. A former member of the Company s Board of Directors is the managing director for recreational tennis at the USTA and a current member is the CFO. Pursuant to the terms of these agreements, the USTA purchases certain software services from the Company. Net revenue from the USTA and its affiliates was approximately \$1.4 million for the three months ended March 31, 2013 and 2012.

## **Table of Contents**

### **20. Employee Benefit Plans**

#### ***Defined Contribution Plan***

The Company has a defined contribution plan under Section 401(k) of the Internal Revenue Code ( 401(k) Plan ) covering all full-time employees who meet certain eligibility requirements. Eligible employees may defer up to 4% of their pre-tax compensation, up to the annual maximum allowed by the Internal Revenue Service. Under the 401(k) Plan, the Company may, but is not obligated to, match a portion of the employee contributions up to a defined maximum. The Company made matching contributions \$0.3 million for the three months ended March 31, 2013 and 2012.

#### ***Deferred Compensation Plan***

In July 2012, the Company approved an unfunded, non-qualified Deferred Compensation Plan for certain employees. Under the Deferred Compensation Plan, participants may elect to defer up to 80% of their base salaries and up to 100% of performance-based compensation and commissions. The Company may also, at its discretion, match a portion of the employee contributions up to a defined maximum for each deferral election as prescribed in the Deferred Compensation Plan. The Company contributions vest annually over a four year period, subject to the employee's continued service with the Company. The Company's liability for the deferred compensation plan totaled less than \$0.1 million as of March 31, 2013 and December 31, 2012, respectively, and is included in other liabilities in the consolidated balance sheets. Beginning in the first quarter of March 31, 2013, participant contributions are invested in Company-owned life insurance policies, which had a cash surrender value of less than \$0.1 million and is included in prepaids and other current assets in the consolidated balance sheet at March 31, 2013.

### **21. Subsequent Events**

On May 1, 2013, the Company announced that Matthew Landa resigned from his position as Chief Executive Officer of the Company effective April 30, 2013. Mr. Landa will remain a member of the Board of Directors through the Company's Annual Meeting of Stockholders in 2013.

On May 1, 2013, the Company announced that David Alberga resigned from his position as Executive Chairman of the Company and Chairman of the Board of Directors of the Company effective April 30, 2013. Mr. Alberga will remain a member of the Board of Directors through the Company's Annual Meeting of Stockholders in 2014.

In connection with their separations, Mr. Landa and Mr. Alberga are entitled to certain termination benefits including a severance payment equal to twelve months of their base salaries, prorated annual target bonus payments, health coverage for twelve months from the date of termination, acceleration of certain unvested stock-based awards and an extension to exercise vested stock-based awards.

On May 1, 2013, the Company announced the appointment of Jon Belmonte as Interim Chief Executive Officer of the Company effective April 30, 2013. In connection with Mr. Belmonte's appointment as Interim Chief Executive Officer, the Company entered into an eight month employment agreement (the Agreement ) with Mr. Belmonte. Under the terms of the Agreement, Mr. Belmonte will receive a monthly salary of \$30,000 and was granted 100,000 stock options to purchase the Company's common stock and issued 134,000 restricted stock units. The fair value of these equity awards is approximately \$0.8 million and will be recorded to stock-based compensation expense over an eight month period beginning on May 1, 2013.

**Table of Contents****ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and in our other public filings with the Securities and Exchange Commission (SEC), including our Annual Report on Form 10-K for the fiscal year ended December 31, 2012.*

*This Quarterly Report on Form 10-Q contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. The statements contained in this Quarterly Report on Form 10-Q that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are often identified by the use of words such as, but not limited to, anticipate, believe, can, continue, could, estimate, expect, intend, may, will, plan, project, seek, should, target, will, would, and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified in Part II Item 1A. Risk Factors below, and those discussed in our other public filings with the SEC. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.*

**Overview**

We are leaders in cloud-based Activity and Participant Management solutions serving a wide range of customer groups including business solutions, community activities, public sector and outdoors and sports. We provide applications that form an online network connecting a fragmented and diverse group of activity and event organizers with a large base of potential participants. Our proprietary technology platform transforms the way organizers manage their activities and events by automating online registrations and streamlining other critical management functions, while also driving consumer participation to their events.

We power a broad range of activities, such as reserving a campsite or tee time, signing up for a marathon or sports league, purchasing a fishing or hunting license, or participating in a community event or corporate conference. From the introduction of our platform in 1999, we have experienced significant growth and in 2012, we had over 55,000 customer organizations that drove approximately 89.9 million annual consumer registrations. Based on the results of a 2010 online survey we commissioned through Survey.com, we believe the organizations we target produce or organize activities and events for the majority of U.S. households. Our proprietary technology platform, ActiveWorks, provides cloud computing applications that reduce the cost and complexity of managing, organizing and promoting these activities and events.

Our business benefits from a powerful network effect. As more organizations use our platform, we increase the breadth and depth of activities and events offered through our platform. This more comprehensive offering of activities attracts more participants. As we attract more participants, we are able to drive increased demand for our customers' activities, thus increasing registrations and revenue for both organizers and us. This revenue growth enables us to develop enhanced functionality and services through ActiveWorks and our websites, further increasing participant engagement and attracting new organizers. In this way, we build increasing value for both organizations and participants.

We serve a wide range of customers including community and sports organizations, large corporations, small and medium-sized businesses, educational institutions, federal and state government agencies, non-profit organizations and other similar entities. We primarily generate revenue from technology fees paid by participants who register for our customers' activities through our cloud computing applications. During the three months ended March 31, 2013, we generated revenue of \$106.0 million, as compared to \$94.4 million in the three months ended March 31, 2012, an increase of 12%.

A large number of our customers are currently being served by our ActiveWorks architecture at varying levels of integration. We are in the process of transitioning to ActiveWorks certain customers who continue to use both our internally developed systems and acquired legacy systems. In addition, part of our growth strategy has included acquisitions, which resulted in the acquisition of additional legacy systems. In the future, we will evaluate acquired systems to determine, based on their sophistication and compatibility, whether to integrate them into ActiveWorks or to migrate the customers using these systems to ActiveWorks. This process is time consuming and requires the investment of significant technical and human resources. During this process, we expect to continue to incur costs associated with maintaining multiple legacy systems.

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

In addition, our long-term strategic plan involves expanding our applications into new business areas within the activity and event registration and management market. A lack of market acceptance of such efforts or our inability to generate satisfactory revenue to offset the development costs could have a material adverse effect on our results of operations and future growth prospects. As we establish and expand our operational capabilities internationally, we will incur additional operating expenses and capital-related costs.

*Technology Revenue.* Our technology revenue was 90% of our total revenue for the three months ended March 31, 2013. Of our technology revenue recognized during the three months ended March 31, 2013, 74% related to registration revenue and 26% related to licensed software, maintenance, hosting, and implementation revenue. During the three months ended March 31, 2013, we processed over 18.1 million consumer registrations.

Our technology fee is a percentage of the total registration amount that is paid by a participant at the time the participant registers. Participants typically use a credit card to register for an activity either online or offline, and in the case of some of our large contracts, by using a call center. Upon registration, the consumer is charged for the total event registration fee, including the technology fee, and the funds are remitted to bank accounts that we control. We record revenue for our technology fee and we remit the remaining funds to the organizer. The organizer has the option of absorbing our technology fee and presenting a total event registration fee to the participant, or adding the technology fee as a separate line item in the event registration fee. Pricing for our cloud offerings is based on a portion of the total dollars processed for a registration and typically has a fixed and variable component. A number of our offerings also include a fee for setup, support or hosting. Our technology platform serves the entire spectrum of organizations, from large to small. Our standard contract for our registration customers is three years. In some cases, we pre-purchase registrations and we retain the funds received upon registration. Approximately 3% of our total revenue represents pre-purchased registrations and the technology revenue associated with these registrations represents the sales price to the participant, in addition to the technology fee. The technology fee and the revenue from pre-purchased registrations represent net registration revenue, since they are the direct result of participant registrations.

**Table of Contents**

Licensed software, maintenance, hosting and implementation revenue was 26% of our technology revenue for the quarter ended March 31, 2013. In previous acquisitions, we acquired licensed software products which include licensed software, maintenance and services. As the market has become more receptive, we have begun transitioning these customers to our solutions. We anticipate that our licensed software, maintenance and services revenue will continue to decline as a percentage of our overall business. In the future, we anticipate sales in our technology segment will be primarily driven by technology fees from our cloud offerings.

*Marketing Services Revenue.* Our marketing services revenue was 10% of our total revenue for the quarter ended March 31, 2013. The marketing services segment works to provide the organizations within our technology segment and their participants with marketing solutions, online communities, membership programs and hosted websites. We group these sales as online services, field marketing and commerce. Online services include online advertising, email marketing and targeted newsletter promotions. We provide field marketing services including event promotions and sponsorships. Our commerce revenue consists of membership programs, training programs and websites. Contracts within our marketing services segment vary in length but are generally less than one year. We obtain customers through direct sales, inside sales and self-setup.

*Seasonality.* Our total revenue experiences seasonality with the three months ended June 30 and September 30 having the higher revenues. This seasonality is mainly due to trends in net registration revenue, as many of our largest customers experience peak business activity during the warmer months of the year.

**Key Business Metrics**

*Net Registration Revenue.* We calculate our net registration revenue by summing the technology fees generated by our registrations and revenue from the sale of pre-purchased registrations in a given period. Technology fees are generally recognized as revenue at the time a transaction is processed, and are typically a percentage of the total registration price paid by a participant. Revenue from the sale of pre-purchased registrations is comprised of the registration price paid by a participant and the technology fee and is recognized at the time the event is held.

*Registrations.* We define a registration as when a participant registers one or more people for an event being held by an organization who is using our technology to register that participant. We determine that a registration has taken place when a participant registers one or more people for an activity or an event being held by one of our customers.

	Three Months Ended March 31,		% Change
	2013	2012	
	(Unaudited)		
	(In thousands, except per registration data)		
Net registration revenue (1)	\$ 70,545	\$ 63,519	11%
Registrations	18,138	18,223	0%
Net registration revenue per registration	\$ 3.89	\$ 3.49	11%

(1) Includes revenue of \$2.6 million and \$0.5 million, related to pre-purchased registration with associated technology fees of \$0.2 million and less than \$0.1 million during the three months ended March 31, 2013, and 2012, respectively.

Registrations decreased less than 0.1 million, or less than 1%, for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. The decrease was primarily due to lower registrations related to hunting and fishing licenses which we believe was due to shifts in weather with unfavorable weather in the 2013 period compared to favorable weather in the 2012 period as well as the expiration of a state contract. This was partially offset by higher registrations in our sports customer group related to strong performance from certain large multi-event organizations, and an increase in registrations from our parks and recreation customers. The average revenue per registration increased 12% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. The increase was mainly due to a shift from our hunting and fishing transactions which have a lower revenue per registration to our business solutions customer group, communities and sports customer groups. The increase in revenue per registration was also partially due to an increase in net registration revenue related to pre-purchased registrations in our sports customer group.

*Mobile Devices.* During the three months ended March 31, 2013 and 2012, we do not believe a significant number of our registrations were made on a mobile or tablet device. We anticipate that revenue attributable to mobile usage will increase in future years due to users increasingly accessing the Internet through mobile devices.

**Basis of Presentation**

***General***

The condensed consolidated financial statements include the accounts of The Active Network, Inc. and its wholly-owned subsidiaries. All intercompany balances have been eliminated.

***Revenue***

We report our revenue in two segments:

Technology

Marketing services

The technology revenue segment is comprised of net registration revenue, which is primarily comprised of the technology fee we charge a participant when they register for one of our organization's events. The types of events we offer on our platform can be categorized into the following four primary groups: business solutions, community activities, public sector and outdoors, and sports. We generate technology revenue for our services based on the technology fee we charge a consumer when they register for one of the events. Consumers generally pay us the registration fee at the time of booking, and we pay the event organizer at a later date. The technology fee is recognized as revenue net of the organization registration fee which is collected directly from our consumer and then we make payment to the event organizer typically on a two week basis. Net registration revenue is recognized when services are provided, net of estimated refunds and other chargebacks. The timing difference between when the cash is collected from our consumers and when payments are made to the event organizers improves our operating cash flow and represents a source of liquidity for us. Technology revenue also includes software licensing, installation, training, maintenance, hosting subscriptions, and the sale of pre-purchased registrations. In certain circumstances we pre-purchase registrations from event organizers and bear the risk and rewards of ownership. Net registration revenue associated with these transactions is recognized when the event occurs and includes the total registration price paid by a customer and the technology fee.



## **Table of Contents**

The marketing services revenue segment includes online services, field marketing services and membership programs. Registrations lead participants to our network of websites and create opportunities for us to sell our online commerce and other marketing services to participants. Our network of websites enables like-minded consumers to engage in our online communities.

### ***Costs and Expenses***

*Cost of Revenue.* Our cost of revenue consists of credit card processing fees for registrations, payroll and related costs including allocated facilities costs, stock-based compensation for employees associated with registration, subscription or software implementation, customer support and onsite event support including travel costs. Costs also include expenses related to our call center operations, amortization of capitalized software development costs and certain acquired intangibles including acquired technology, customer supply costs, inventory costs and internet hosting costs.

*Sales and Marketing.* Our sales and marketing costs are primarily salaries, benefits, incentive compensation, stock-based compensation and allocated facilities costs for our sales and marketing employees. Costs also include expenses for travel, trade shows and other promotional and marketing activities including direct and online marketing.

*Research and Development.* Our research and development costs are primarily salaries, benefits, incentive compensation, stock-based compensation and allocated facilities costs for employees and contractors engaged in the development and ongoing maintenance of our products and services.

*General and Administrative.* Our general and administrative costs are primarily salaries, benefits, incentive compensation, stock-based compensation and allocated facilities costs for employees engaged in support activities including executive, finance, accounting, human resources, legal and internal information technology support. Also included are professional fees and contractor costs for legal and accounting services. Software expenses and travel costs for support employees, taxes, fees and licenses are also included.

*Amortization of Intangibles.* Intangible assets with finite lives are amortized using a combination of straight-line and accelerated methods based on the expected cash flows from the asset over their estimated useful lives. This includes assets recorded in conjunction with certain acquisitions.

*Other Income (Expense), Net.* Other income (expense), net consists primarily of the interest income earned on our cash and cash equivalents, interest paid on our debt, foreign exchange gains and losses and other one-time gains and losses.

*Provision for Income Taxes.* Provision for income taxes consists of federal and state income taxes in the United States and income taxes in certain foreign jurisdictions.

### **Adjusted EBITDA**

To provide investors with additional information regarding our financial results, we have disclosed within this Quarterly Report on Form 10-Q Adjusted EBITDA, a non-GAAP financial measure. We have provided a reconciliation below of Adjusted EBITDA to net loss, the most directly comparable GAAP financial measure.

We have included Adjusted EBITDA in this Quarterly Report on Form 10-Q because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short and long-term operational plans. In particular, the exclusion of certain expenses in calculating Adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Additionally, Adjusted EBITDA is a key financial measure used by the compensation committee of our board of directors in connection with the payment of bonuses to our executive officers. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Our use of Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these limitations are:

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

Adjusted EBITDA does not reflect our cash expenditures for capital equipment, internally developed software costs or certain other contractual commitments;

although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may need to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements;

Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;

Adjusted EBITDA does not consider the potentially dilutive impact of equity-based compensation to our management team or employees;

Adjusted EBITDA does not reflect tax payments that may represent a reduction in cash available to us; and

other companies, including companies in our industry, may calculate Adjusted EBITDA differently, which reduces its usefulness as a comparative measure.

Because of these limitations, you should consider Adjusted EBITDA alongside other financial performance measures, including various cash flow metrics, net loss and our other GAAP financial results.

The following table presents a reconciliation of Adjusted EBITDA for each of the three month periods ended March 31, 2013 and March 31, 2012:

	Three Months Ended March 31,	
	2013	2012
	(Unaudited)	
	(in thousands)	
<b>Reconciliation of Adjusted EBITDA to Net loss:</b>		
Net loss	\$ (15,228)	\$ (20,338)
Interest expense, net	167	126
Provision for income taxes	1,318	611
Depreciation and amortization	15,399	14,976
Stock-based compensation	3,926	3,029
Other (income) expense, net	553	(1,401)
Adjusted EBITDA	\$ 6,135	\$ (2,997)

**Table of Contents****Critical Accounting Policies**

In presenting our condensed consolidated financial statements in conformity with U.S. generally accepting accounting principles, or GAAP, we are required to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures.

Some of the estimates and assumptions we are required to make relate to matters that are inherently uncertain as they pertain to future events. We base these estimates and assumptions on historical experience or on various other factors that we believe to be reasonable and appropriate under the circumstances. On an ongoing basis, we reconsider and evaluate our estimates and assumptions. Our future estimates may change if the underlying assumptions change. Actual results may differ significantly from these estimates.

We believe that the critical accounting policies listed below involve our more significant judgments, assumptions and estimates and, therefore, could have the greatest potential impact on our condensed consolidated financial statements.

Revenue recognition

Software development costs

Business combinations

Impairment of goodwill, indefinite-lived intangible assets and long-lived assets

Income taxes

Stock-based compensation

As of March 31, 2013, there have been no material changes to the items disclosed as critical accounting policies and estimates in Management Discussion and Analysis of Financial Condition and Results of Operations in Part II Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2012.

**Results of Operations**

The following tables set forth our results of operations for the periods presented and those results as a percentage of our revenue. The period-to-period comparison of financial results is not necessarily indicative of future results.

	<b>Three Months Ended March 31, 2013                  2012 (Unaudited)</b>	
	<b>(in thousands)</b>	
Net revenue:		
Technology revenue	\$ 94,990	\$ 84,120
Marketing services revenue	11,021	10,318
Total net revenue	106,011	94,438
Cost of net revenue:		

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

Cost of technology revenue	49,046	45,655
Cost of marketing services revenue	1,191	1,316
Cost of net revenue	50,237	46,971
Gross profit	55,774	47,467
Operating expenses:		
Sales and marketing	26,826	25,024
Research and development	21,176	21,209
General and administrative	16,508	16,544
Amortization of intangibles	4,454	5,692
Total operating expenses	68,964	68,469
Loss from operations	(13,190)	(21,002)
Interest income	15	25
Interest expense	(182)	(151)
Other income (expense), net	(553)	1,401
Loss before provision for income taxes	(13,910)	(19,727)
Provision for income taxes	1,318	611
Net loss attributable to common stockholders	\$ (15,228)	\$ (20,338)

**Table of Contents**

	Three Months Ended March 31,	
	2013	2012
	(Unaudited)	
	(In thousands)	
Net Revenue	100%	100%
Cost of net revenue	47	50
Gross profit	53	50
Operating expenses:		
Sales and marketing	25	26
Research and development	20	22
General and administrative	16	18
Amortization of intangibles	4	6
<b>Total operating expenses</b>	<b>65</b>	<b>73</b>
Loss from operations	(12)	(22)
Interest income		
Interest expense		
Other (expense) income, net	(1)	1
Loss before provision for income taxes	(13)	(21)
Provision for income taxes	1	1
Net loss	(14%)	(22%)

**Three months ended March 31, 2013 and 2012****Net Revenue**

	Three Months Ended March 31,		%
	2013	2012	
	(Unaudited)		Change
	(In thousands)		
Net revenue:			
Technology revenue	\$ 94,990	\$ 84,120	13%
Marketing services revenue	11,021	10,318	7%
Net revenue	\$ 106,011	\$ 94,438	12%

Total revenue increased \$11.6 million, or 12%, for the three months ended March 31, 2013 compared to the three months ended March 31, 2012 as discussed below.

*Technology revenue.* Net registration revenue increased \$7.0 million or 11% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. The increase was driven by higher revenue in our business solutions, communities and sports customer groups, as well as an increase in net registration revenue related to pre-purchased registrations in our sports customer group. Software revenue increased \$3.8 million or 19% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012, due to an increase in revenue from business solutions, ski attractions and from our faith offerings. In total, technology revenue increased \$10.9 million or 13% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012.

*Marketing services revenue.* Revenue increased \$0.7 million, or 7% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. Revenue related to our membership programs, wellness programs, and promotions programs increased and was partially

offset by a decline in revenue from our field marketing programs.

***Costs and Expenses***

*Employee related expenses.* Headcount and its related expenses make up a significant portion of our total expenses. We define employee related expenses as salaries, fringe benefits, facilities costs, employee travel, commissions, bonuses, stock-based compensation and other employee expenses.

**Table of Contents***Cost of Net Revenue*

	<b>Three Months Ended March 31,</b>		<b>%</b>
	<b>2013</b>	<b>2012</b>	<b>Change</b>
	<b>(Unaudited)</b>		
	<b>(In thousands)</b>		
Cost of net revenue	\$ 50,237	\$ 46,971	7%
Headcount (at period end)	1,416	1,595	(11%)

Cost of net revenue increased \$3.3 million or 7% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. Employee related costs decreased \$1.3 million or 7% for the three months ended March 31, 2013 related mainly to an 11% decrease in headcount, which was primarily related to decline in seasonal and other call center employees due to efficiencies in operations as well as a reduction in relocation costs we had in 2012 which did not reoccur in 2013. Depreciation of fixed assets and amortization of intangibles and software that was capitalized in earlier periods increased \$1.8 million for the three months ended March 31, 2013. Inventory costs also increased \$1.7 million resulting from increased pre-purchased registrations in our sports customer group, and credit card processing fees increased \$1.5 million or 13% related to growth in registration revenue.

*Sales and Marketing*

	<b>Three Months Ended March 31,</b>		<b>%</b>
	<b>2013</b>	<b>2012</b>	<b>Change</b>
	<b>(Unaudited)</b>		
	<b>(In thousands)</b>		
Sales and marketing	\$ 26,826	\$ 25,024	7%
Headcount (at period end)	667	608	10%

Sales and marketing expense increased \$1.8 million or 7% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. The increase was primarily due to higher employee related expenses of \$2.0 million or 9%, related to a 10% increase in headcount as we invested in our sales and marketing staff to support future revenue growth. The employee related costs included higher commissions and salaries expenses, as well as costs for a sales team meeting held in January. Software expenses increased \$0.2 million related to our licensing of CRM software, and this was partially offset by lower contractor expenses of \$0.3 million mainly related to costs for the implementation of our CRM software in 2012, with these costs not reoccurring in 2013.

*Research and Development*

	<b>Three Months Ended March 31,</b>		<b>%</b>
	<b>2013</b>	<b>2012</b>	<b>Change</b>
	<b>(Unaudited)</b>		
	<b>(In thousands)</b>		
Research and development	\$ 21,176	\$ 21,209	0%
Headcount (at period end)	1,020	1,045	(2%)

Research and development expense decreased less than \$0.1 million or less than 1% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. Employee related expenses increased \$0.8 million, as average salary increased slightly while headcount

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

declined 2% compared to the prior year. Contractor costs declined \$0.7 million as we completed certain implementations, mainly related to our outdoors customer group.

### *General and Administrative*

	<b>Three Months Ended March 31,</b>		<b>% Change</b>
	<b>2013 (Unaudited)</b>	<b>2012</b>	
	<b>(In thousands)</b>		
General and administrative	\$ 16,508	\$ 16,544	0%
Headcount (at period end)	349	310	13%

General and administrative expense decreased less than \$0.1 million or less than 1% for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. Employee related expenses increased \$0.6 million or 4% with higher salaries resulting from an increase in headcount, and higher stock based compensation expenses, partially offset by other employee related costs including a lower accrual for employee bonuses based on a change in our bonus plans. Contractors' expenses declined \$0.4 million related to lower accounting fees for audit costs, and software costs were \$0.2 million lower.

### *Amortization of Intangibles*

	<b>Three Months Ended March 31,</b>		<b>% Change</b>
	<b>2013 (Unaudited)</b>	<b>2012</b>	
	<b>(In thousands)</b>		
Amortization of intangibles	\$ 4,454	\$ 5,692	(22%)



**Table of Contents**

Amortization of intangibles decreased \$1.2 million for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. The decrease was due to a decline in amortization expense as a result of certain intangibles being fully amortized.

*Interest and Other Income (Expense), Net*

	<b>Three Months Ended March 31,</b>		<b>% Change</b>
	<b>2013 (Unaudited)</b>	<b>2012</b>	
	<b>(In thousands)</b>		
Interest income	\$ 15	\$ 25	(40%)
Interest expense	(182)	(151)	21%
Other income (expense), net	(553)	1,401	(139%)
Interest and other income (expense), net	\$ (720)	\$ 1,275	(156%)

Interest income decreased by less than \$0.1 million or (40%) for the three months ended March 31, 2013 compared to the three months ended March 31, 2012 due to a decrease in exchange rates on our foreign currency cash accounts.

Interest expense increased by less than \$0.1 million or 21%, for the three months ended March 31, 2013 compared to the three months ended March 31, 2012 primarily due to an increase in loan fee amortization offset by a decrease in interest paid on capital leases.

Other income (expense), net was \$0.5 million expense for the three months ended March 31, 2013 and is primarily related to losses on foreign exchange due to the fluctuation in the exchange rate. Other income (expense), net was \$1.4 million income for the three months ended March 31, 2012 and included a gain resulting from the change in the fair value of contingent consideration related to an acquisition of \$1.1 million, which settled in the second quarter of 2012 as well as gains on foreign exchange due to the fluctuation in the exchange rate.

*Income Taxes*

	<b>Three Months Ended March 31,</b>		<b>% Change</b>
	<b>2013 (Unaudited)</b>	<b>2012</b>	
	<b>(In thousands)</b>		
Provision for income taxes	\$ 1,318	\$ 611	116%

Provision for income taxes increased \$0.7 million for the three months ended March 31, 2013 compared to the three months ended March 31, 2012. The provision for each period is primarily the result of increases in our deferred tax liabilities from the amortization of tax deductible goodwill. In addition, during the three months ended March 31, 2013, we recorded an additional expense of \$0.2 million related to uncertain tax positions principally related to the denial of amortization deductions and withholding taxes asserted in connection with a tax audit examination of one of the Company's foreign subsidiaries.

The effective tax rate of (9.5)% for the three months ended March 31, 2013 differs from the statutory rate primarily due to state taxes, foreign taxes, the increase in the deferred tax liability from the amortization of tax deductible goodwill, the increase in the valuation allowance and discrete items recorded in the period.

**Liquidity and Capital Resources**

**Condensed Consolidated Statements of Cash Flows Data:**

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2013</b>	<b>2012</b>
	<b>(In thousands)</b>	
Net cash provided by operating activities	60,217	28,475
Net cash used in investing activities	(11,518)	(49,171)
Net cash provided by financing activities	(486)	7,161
Effect of exchange rates on cash	(333)	(150)
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>48,546</b>	<b>(13,685)</b>

As of March 31, 2013, we had cash and cash equivalents of \$107.0 million and restricted cash of \$0.4 million. We did not have any short-term or long-term investments. Cash and cash equivalents consist of cash and non-interest and interest bearing accounts. Restricted cash consists of cash restricted from withdrawal. We believe that our existing cash and cash equivalents together with cash flows from our operating activities and cash available under our Credit Facility will be sufficient to fund our operations for at least the next 12 months.

*Operating Activities*

For the three months ended March 31, 2013, cash provided by operating activities was \$60.2 million, taking into account a net loss of \$15.2 million, plus \$9.7 million in depreciation and amortization of property and equipment, \$5.7 million in amortization of intangibles, \$3.9 million in stock-based compensation, \$0.9 million increase in deferred tax liability, and \$55.7 million net increase from the change in operating assets and liabilities, offset by \$0.4 million in other items. Net change in operating assets and liabilities included a \$63.0 million increase in registration fees payable due to increased registrations related to growth in the business and seasonality as well as a large payable for one of our outdoors state customers, a \$28.5 million increase in registrations receivable resulting from an increase in registrations due to growth in the business and seasonality, a \$7.9 million increase in accrued expenses, and a \$8.1 million increase in deferred revenue resulting from growth in the business, offset by a \$8.5 million decrease in accounts receivable, and \$3.4 million from a net decrease in accounts payable, inventories, and other items.

---

## **Table of Contents**

### *Investing Activities*

Net cash used in investing activities for the three months ended March 31, 2013 was \$11.5 million, resulting primarily from \$6.1 million cash used for capital expenditures and \$5.4 million for capitalized software development costs to support the increase in headcount.

### *Financing Activities*

Net cash used in financing activities for the three months ended March 31, 2013 was \$0.5 million, resulting primarily from \$0.3 million cash received from the exercise of stock options, offset by \$0.8 million for payments on capital lease obligations.

In December 2011, we entered into a five-year, senior secured revolving credit facility, with certain institutional lenders, for an initial aggregate principal amount of \$50 million. On July 2, 2012, we amended the Credit Agreement to, among other things, add J.P. Morgan Securities LLC, as a Joint Lead Arranger. The Credit Agreement, as amended, provides for a five-year, senior secured revolving credit facility in an initial aggregate principal amount of \$100.0 million (the Credit Facility). The Credit Facility includes a \$25.0 million sublimit for the issuance of standby letters of credit and a \$5.0 million sublimit for swing line loans, which will be available on a same-day basis. The credit amendment also contains an accordion feature which allows us, subject to certain terms and conditions, to increase the lending commitments by up to \$50.0 million.

The Credit Facility has a maturity date of December 16, 2016, but the outstanding amounts may be prepaid at any time without penalty or premium (except for certain customary break funding payments in connection with LIBOR loans) and is available to fund acquisitions and ongoing operations.

Any advance under the Credit Facility will accrue interest at rates per annum that are equal to, based on certain conditions, either (a) 1.5% above the applicable LIBOR rate, or (b) 0.5% above (i) the greatest of (x) the prime rate, (y) the federal funds effective rate plus 0.5% or (z) a daily rate equal to one-month LIBOR plus 1.00%. The unused portion of the Credit Facility will also be subject to an unused fee that will be calculated at a per annum rate of 0.25%. The interest rate under the Credit Facility was 1.81% as of December 31, 2012.

Under the Credit Facility, we are required to comply with certain financial covenants and ratios, including a quarterly consolidated leverage ratio of consolidated funded indebtedness to EBITDA of not more than 2.5 to 1.0 and a quarterly consolidated fixed charge coverage ratio of not less than 1.5 to 1.0. Substantially all of our tangible and intangible assets are considered collateral security under the secured Credit Facility. As of March 31, 2013, we were in compliance with all specified financial covenants and ratios.

Payment of the amounts owed under the Credit Facility may be accelerated, and the lenders' commitments under the Credit Agreement may be terminated, upon an event of default, as defined in the Credit Agreement, such as failure to pay amounts owed when due, breach of a covenant, material inaccuracy of a representation or occurrence of bankruptcy, subject in some cases to cure periods.

At December 31, 2011 outstanding swing line loans were \$5.0 million. In January 2012, we fully repaid the \$5.0 million swing line loan and immediately borrowed \$10.0 million under the revolving Credit Facility, which was fully repaid in August 2012. As of March 31, 2013 and 2012, we had \$0 and \$10 million, respectively, outstanding under the Credit Facility and we had \$94.9 million available under the Credit Facility as of March 31, 2013, net of \$5.1 million in outstanding letters of credit.

### *Letters of Credit*

At March 31, 2013 and 2012, we had no amounts and \$1.4 million, respectively, of cash restricted from withdrawal and held by banks as collateral for letters of credit.

### **Off Balance Sheet Arrangements**

As of March 31, 2013, we did not have any off balance sheet arrangements.

### **Contractual Obligations**

Our contractual obligations relate primarily to borrowings under our credit facility, operating leases, capital leases and purchase obligations. As of March 31, 2013, there have been no significant changes to our contractual obligations from the information provided in Part II Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, included in our Annual Report on Form 10-K for the

year ended December 31, 2012.

**Recently Issued Accounting Standards**

Accounting standards that have been issued by the FASB or other standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on our condensed consolidated financial statements upon adoption.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to market risks in the ordinary course of our business. These risks primarily include interest rate fluctuations, foreign exchange risk and inflation.

*Interest Rate Fluctuations*

Our investments include cash and cash equivalents, which consists of cash and money market accounts. The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk. We do not enter into investments for trading or speculative purposes. Our investments are exposed to market risk due to a fluctuation in interest rates, which may affect our interest income and the fair market value of our investments. Due to the short-term nature of our investment portfolio, we do not believe an immediate 10% increase in interest rates would have a material effect on the fair market value of our portfolio, and therefore we do not expect our operating results or cash flows to be materially affected to any degree by a sudden change in market interest rates.

---

## **Table of Contents**

On December 16, 2011, we entered into a Credit Agreement, as amended on July 2, 2012, that provides for a credit facility bearing interest at floating rates based upon either (a) 1.5% above the applicable LIBOR rate, or (b) 0.5% above (i) the greatest of (x) the prime rate, (y) the federal funds effective rate plus 0.5% or (z) a daily rate equal to one-month LIBOR plus 1.00%. Our exposure to market risk for changes in interest rates relates primarily to the floating interest rate. Accordingly, interest rate increases would increase our interest expense on outstanding credit facility balances. As of March 31, 2013, no amount was drawn under the credit facility. Based on a sensitivity analysis, an increase of 1% in the floating interest rate would increase our borrowing costs by less than \$0.1 million for each \$1.0 million of borrowings under the credit facility, assuming such borrowings were outstanding for the entire quarter, or a maximum of \$0.7 million if we utilized our entire line of credit.

### *Foreign Currency Exchange Risk*

We have foreign currency risks related to our revenue and operating expenses denominated in currencies other than the U.S. dollar, principally the Canadian dollar and the British pound sterling. We do not believe movements in the foreign currencies in which we transact will significantly affect future net earnings. Foreign currency risk can be quantified by estimating the change in cash flows resulting from a hypothetical 1% adverse change in foreign exchange rates. We believe such a change would not have a material impact on our results of operations.

### *Inflation*

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

## **ITEM 4. CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as such term is defined in Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934, as amended, (the Exchange Act), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were effective at the reasonable assurance level to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, the design of a control system must reflect that there are resource constraints, thus, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the probability of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

### **Changes in Internal Control over Financial Reporting**

We are involved in ongoing evaluations of internal controls. In anticipation of the filing of this Form 10-Q, our Chief Executive Officer and Chief Financial Officer, with the assistance of other members of our management, performed an evaluation of any change in internal control over financial reporting that occurred during our last fiscal quarter that has materially affected, or is likely to materially affect, our internal controls over financial reporting. There has been no change to our internal control over financial reporting during our most recent fiscal quarter that has materially affected, or is likely to materially affect, our internal controls over financial reporting.

## **PART II. OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

We are from time to time subject to various claims and legal actions during the ordinary course of business, including potential liabilities under government regulations and various claims and legal actions that are pending or may be asserted by third parties. These matters arise in the ordinary course and conduct of our business, and, at times, as a result of our acquisitions. They include, for example, commercial, intellectual property and employment matters. Some are expected to be covered, at least partly, by insurance. We intend to continue to defend ourselves vigorously in such matters. We believe that there are currently no claims or legal actions that would reasonably be expected to have a material adverse effect on our results of operations or financial condition.

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

*Investing in our common stock involves a high degree of risk. You should carefully consider the following risks and all other information contained in this Quarterly Report on Form 10-Q, as well as our Annual Report on Form 10-K for the fiscal year ended December 31, 2012, which we filed with the SEC on February 26, 2013, including our condensed consolidated financial statements and the related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations, before investing in our common stock. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, also may become important factors that affect us. If any of the following risks materialize, our business, financial condition and results of operations could be materially harmed. In that case, the trading price of our common stock could decline, and you may lose some or all of your investment.*

## **Table of Contents**

### **Risks Related To Our Business**

#### **We have a history of significant net losses, and we may not be able to achieve or maintain consistent profitability on an annual basis.**

We have incurred fiscal year net losses since our inception in 1998. Our net losses were approximately \$15.2 for the three months ended March 31, 2013, \$43.0 million for the year ended December 31, 2012, \$15.3 million for the year ended December 31, 2011, and \$27.3 million for the year ended December 31, 2010. At March 31, 2013, we had an accumulated deficit of approximately \$334 million. We anticipate our operating expenses will continue to increase during the next few years as we complete the transition of our customers to ActiveWorks, make additional acquisitions, increase our sales and marketing activities, expand outside of North America and enhance our customer service and call center capabilities. If our revenue grows at a slower rate than we anticipate, or if our operating expenses increase unexpectedly, we may not be able to achieve or maintain consistent profitability.

#### **Our limited operating history, new and unproven business model and rapidly evolving market make it difficult to evaluate our future prospects and increase the risk that we will not be successful.**

We launched our application services in 1999, and we have made a number of changes to our operations, technology platform and online communities since that time. As a result, we have a limited operating history with our current business upon which to predict our future operating results. In addition, the business of providing cloud computing applications to activity and event organizers and building and supporting online communities for activity and event participants is relatively new and subject to rapid change. You must consider our business and prospects in light of the risks and difficulties we will continue to encounter as a company with a new and unproven business model and operating in a new and rapidly evolving market. These risks and difficulties include our ability to, among other things:

attract new customers;

deepen our relationships with our existing customers;

continue to transition our existing customers to ActiveWorks;

continue to earn the trust of organizers and participants with respect to the processing, storage and use of their confidential information and personal data in compliance with our own high standards of care and applicable governmental and other legal obligations related to privacy and data protection;

develop a scalable, high performance technology infrastructure that can securely, efficiently and reliably handle increased usage globally;

continue to manage and successfully integrate acquired businesses, applications and technologies;

successfully compete with other companies that engage in the activity and event registration and management market;

continue to build and support online communities and applications for activity and event participants;

successfully introduce and deploy new features and functionality for our technology platform;

increase revenue from our applications, websites and online communities;

avoid interruptions or disruptions in our service;

avoid problems with the functionality of our applications;

continue to hire, integrate and retain highly skilled team members who embrace our values and culture; and

successfully expand our business outside of North America.

We may not be able to address these risks and difficulties or others that we may encounter, including those described elsewhere in this risk factors section. Our failure to adequately address risks and difficulties as we encounter them could cause our reputation to suffer and harm our business. We base our current and future expense levels on our management's estimates of the size of our market and the number of potential customers and registrations, operating forecasts and estimates of future revenue. However, our revenue and operating results are difficult to forecast due to the uncertainty of our market and our ability to increase our customer base and the number of participants who elect to register for activities using our applications. In addition, certain of our expenses are fixed, and we may be unable to adjust our spending in a timely manner to compensate for any unexpected shortfall in revenue. As a result, we may make errors in predicting our revenue and expenses, which would harm our business and financial condition.

**Our growth rate over the past few years may not be sustainable. If we fail to maintain an adequate growth rate, our business will be adversely affected and we may not achieve or maintain profitability.**

Our revenue has grown rapidly over the past few years, increasing to \$418.9 million in 2012 from \$337.4 million in 2011 and \$279.6 million in 2010, representing a compound annual growth rate over this period of 22.4%. We may not be able to sustain this level of growth in future periods, and you should not rely on the revenue growth of any prior quarterly or annual period as an indication of our future performance. Further, a portion of our revenue growth in each year resulted from acquisitions. We may not complete acquisitions in the future that increase our revenue at the same rate as in prior periods. The identification of suitable acquisition candidates can be difficult, time-consuming and costly, and we may not be able to successfully complete the acquisitions we do identify. If we are unable to maintain an adequate rate of growth, our business will be adversely affected and we may not achieve or maintain profitability.

**If we fail to effectively manage our growth, our business and operating results could be harmed.**

The substantial growth in our business over the past few years has placed, and may continue to place, significant demands on our management, our operating infrastructure and our internal controls and procedures. As our operations grow in size and complexity, we will need to improve and upgrade our operating systems and infrastructure to offer an increasing number of organizers and participants enhanced applications, features, functionality and support. In addition, we will be required to strengthen our internal controls and our risk management policies and procedures. The expansion of our operating systems and infrastructure and the strengthening of our controls, policies and procedures will require us to commit substantial financial, operational and technical resources in advance of an increase in the volume of our business, with no assurance that our business will actually increase. Continued growth could also strain our ability to maintain reliable service levels for organizers and participants, as well as to recruit, train and retain highly skilled personnel. If we fail to effectively manage our growth, our business and operating results could be harmed.



## **Table of Contents**

### **Acquisitions could prove difficult to integrate, disrupt our business, dilute stockholder value, strain our resources and impair our operating results, financial conditions and prospects.**

Acquisitions have been an important part of our growth to date. We have completed a significant number of acquisitions over the past few years. We may continue to seek to acquire and invest in businesses, applications and technologies that we believe could complement or expand our business, augment our market coverage, enhance our technology platform, provide us with valuable customer contacts or otherwise offer growth opportunities.

Acquisitions and investments involve numerous risks and difficulties, including:

difficulties in integrating operations, technologies, accounting functions and personnel;

difficulties in supporting and transitioning customers of our acquired companies to our technology platform;

difficulties in maintaining the security and reliability of acquired applications;

delays in strengthening internal controls and risk management policies and procedures;

diversion of financial and management resources from existing operations;

potential loss of key employees;

inability to generate sufficient revenue to offset acquisition or investment costs;

assumption of unknown liabilities and claims;

potential disputes and litigation;

potential diminishment in the value of any acquired brands; and

potential write-offs of acquired assets.

Acquisitions also frequently result in recording of goodwill and other intangible assets, which are subject to potential impairments in the future that could harm our operating results. In addition, if we finance acquisitions by issuing convertible debt or equity securities, our existing stockholders may be diluted. Such dilution could adversely affect the market price of our stock. Moreover, if we are unable to identify suitable future acquisition candidates, reach agreement with these parties or obtain the financing needed to complete such acquisitions, we could lose market share to competitors who are able to complete such acquisitions. This loss of market share could negatively impact our business, revenue and future growth. If we fail to achieve the anticipated benefits of any acquisitions we have completed or may complete in the future, our business, operating results, financial condition and prospects may be impaired.

**Any failure to compete successfully against current or future competitors would materially adversely affect our business and prospects.**

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

The market for technology applications for activity and event organizers is fragmented, competitive and rapidly evolving. Our primary competition comes from traditional registration processing methods used by activity and event organizers, such as paper-based registrations submitted by mail or in person or reservations submitted by telephone. We also face competition from:

custom-developed applications created by an organizer's technical staff or an outside custom service provider;

companies that offer generalized functional software that have features and functionality that organizers can use to register participants and manage their activities, such as content or contact management software programs, e-commerce solutions, enterprise resource planning software and other products having separate software modules; and

companies that offer organizers integrated hosted software solutions in one or more verticals within the activities and events market. Our competitors may announce new products, services or enhancements that better address changing industry standards or the needs of organizers and participants. In addition, competitors and potential competitors may enter into business combinations or alliances that strengthen their competitive positions. For example, companies who we do not consider to be significant competitors could acquire one or more of the various companies in our fragmented industry and, over a short period of time, become a significant competitor in the markets we service. If any of these competitors were to aggressively price their competing services in our market, we may be required to reduce our prices, which could adversely affect our operating results and financial condition. In addition, it may be difficult to displace a competitor once they have established a relationship with an organizer.

We expect to encounter new and evolving competition as the market becomes aware of the advantages of cloud computing applications for activity and event organizers. For example, social networking companies with a large number of online users could develop competing applications or partner with third parties to do so. Future or existing competitors may introduce different pricing models, and offer users applications at minimal or no cost. In addition, larger, better capitalized companies with greater operational, strategic, financial, personnel, customer or user bases and other resources than we have could also enter our market and attempt to compete with us. If we do not successfully compete with existing and future competitors, our business and prospects will be adversely affected.

### **Our business may be harmed if we fail to successfully transition certain of our existing customers to ActiveWorks.**

We have made a significant investment in developing ActiveWorks, and a large number of our customers are currently being served by our ActiveWorks architecture at varying levels of integration. We are in the process of transitioning to ActiveWorks certain customers who continue to use both our internally developed systems and acquired legacy systems. We are developing the additional features required to complete this transition. As legacy systems are transitioned to ActiveWorks, we will end any further development on those products and retire the applications. In addition, as part of our growth strategy, we expect to continue to inherit legacy systems through acquisitions. We will evaluate these systems to determine, based on their sophistication and compatibility, whether to integrate them into ActiveWorks or to migrate the customers using them to ActiveWorks. This process is time consuming and requires the investment of significant technical and human resources. During this process, we will continue to incur the costs and face the risks and difficulties associated with maintaining multiple legacy systems. During that transition period, we may also experience service interruptions, system failures and security breaches due to the shortcomings of certain of the legacy systems. Further, as we transition legacy systems to ActiveWorks, we may discontinue certain brands associated with those legacy systems and we may encounter resistance from customers who have affinity for these brands. If we fail to complete the transition to ActiveWorks in a cost-effective and timely manner and without service interruptions, system failures, security breaches or resistance from customers, our business may be harmed.

---

## **Table of Contents**

### **If our computer systems are compromised, we could be subject to fines, damages, litigation and enforcement actions and organizers and participants could curtail or cease using our applications, the occurrence of which would harm our business.**

Our computer systems involve the storage and transmission of non-public personal and credit card information provided by our customers and participants. Despite our security measures, our computer systems are vulnerable to computer viruses, break-ins and other attacks that could lead to the unauthorized access, disclosure and use of non-public personal information, including credit card data. The techniques used by criminal elements to attack our computer systems are sophisticated, change frequently and may originate from less regulated and remote areas of the world. As a result, we may not be able to address these techniques proactively or implement adequate preventative measures. In one instance, we became aware of a security breach in one of the legacy computer systems we inherited through one of our acquisitions. This type of breach could potentially result in the unauthorized acquisition and use of credit card data of a number of participants. We promptly isolated the affected computer system, conducted a forensic analysis of this breach, took steps to clean the affected computer system and implemented a remediation plan to prevent any further breach. We cooperated with the federal authorities investigating the criminals who perpetrated the attack. We cannot guarantee that we will be able to prevent a breach of our computer systems in the future. The breach of our computer systems may subject us to fines, damages from claims asserted by payment processors, merchant banks, organizers and participants, litigation and enforcement actions. In addition, if we experience further compromises of our computer systems, payment processors, merchant banks, organizers and participants may lose confidence and cease using our applications, which would harm our business.

### **We are subject to data privacy laws and regulations as well as contractual privacy obligations, and our failure to comply could subject us to fines and damages and would harm our reputation and business.**

We are subject to the data privacy laws and regulations adopted by federal, state and foreign governmental agencies. Data privacy is highly regulated, and may become the subject of additional regulation in the future. Privacy laws restrict our storage, use, processing, disclosure, transfer and protection of non-public personal information, including credit card data, provided to us by our customers and participants. In addition, we are subject to the privacy-related obligations in our contracts with our customers and other third parties (including voluntary third-party certification bodies such as TRUSTe). Any failure by us to comply with applicable privacy laws or regulations, our contractual privacy obligations or our own privacy policies, may result in fines, statutory or contractual damages or litigation or governmental enforcement actions. Additionally, violations of our legal or contractual privacy obligations could cause organizers and participants to lose trust in us, which would harm our reputation and business.

### **Our technology systems are vulnerable to damage, interruptions or failures, any of which could harm our reputation and business.**

Our technology systems rely on computer hardware and communications systems located either in our facilities or at third-party facilities, including our main web-hosting facilities in Las Vegas, Nevada, Ashburn, Virginia, Toronto, Ontario, and Kelowna, British Columbia. We do not control the operation of the third-party facilities and must rely on third parties to provide the physical security, facilities management and communications infrastructure services to ensure the reliable and consistent delivery of our solutions to our customers. Our web-hosting technology systems located at our facilities and at third-party facilities are vulnerable to damage or interruption from catastrophic occurrences such as earthquakes, floods, fires, power loss, telecommunications failures, terrorist attacks and similar unforeseen events. Despite any precautions we may take, the occurrence of a natural disaster or other unexpected problems at one of our facilities or the facilities operated by third parties who house our equipment could result in lengthy interruptions in our services.

We are in the process of implementing procedures designed to allow us to move our production operations over to a backup datacenter in the event of a catastrophe. Although this program is functional, it does not provide a real-time failover in all instances, so if one of our websites shuts down it would remain shut down for a period of time while the transition takes place, and during that time, the website would not be accessible. In addition, the prolonged interruption of service of one or more of our websites that process transactions could result in potentially significant losses.

We carry business interruption insurance but our coverage may not be sufficient to compensate us for the potentially significant losses that may result from prolonged interruptions in our services as a result of system failures.

### **If credit card payment processors and service providers fail or no longer agree to provide their services, change their services or terms of service or increase processing fees, our customer relationships could be adversely affected and we could lose business and revenue.**

We rely on agreements with large payment processing organizations to enable us to provide credit card authorization, data capture, settlement and merchant accounting services, and access to various reporting tools for the customers we serve. Our credit card processors and service providers could terminate their arrangements with us or fail to perform their services efficiently, become unwilling or unable to provide payment processing services to us or change the services or terms of service provided to us, each of which would adversely affect our relationships with

customers and could cause customers to discontinue using our applications and adversely affect our operating results. In addition, we cannot guarantee that credit card companies will not increase the transaction fees we incur for each registration we process. Any increase in transaction fees would require us to increase the prices we charge for our products and services or negatively impact our profitability, either of which could adversely affect our business, financial condition and results of operations. In addition, if credit card payment processors and service providers fail or no longer agree to provide their services, our customer relationships could be adversely affected and we could lose business and revenue.

**We are subject to the rules and regulations adopted by the card networks, such as Visa, MasterCard and American Express, and if we fail to adhere to their rules and regulations, we would be in breach of our contractual obligations to payment processors and merchant banks, which could subject us to damages and liability and could eventually prevent us from processing or accepting credit cards.**

The card networks, such as Visa, MasterCard and American Express, have adopted rules and regulations that apply to all merchants who process and accept credit cards for payment of goods and services. We are obligated to comply with these rules and regulations as part of the contracts we enter into with payment processors and merchant banks. The rules and regulations adopted by the card networks include the Payment Card Industry Data Security Standards, or the PCI DSS. Under the PCI DSS, we are required to adopt and implement internal controls over the use, storage and security of card data to help prevent credit card fraud. We assess our compliance with the PCI DSS on a periodic basis, and make necessary improvements to our internal controls. If we fail to comply with the rules and regulations adopted by the card networks, including the PCI DSS, we would be in breach our contractual obligations to payment processors and merchant banks. Such failure to comply may subject us to fines, penalties, damages and civil liability, and could eventually prevent us from processing or accepting credit cards and reduce our working capital. Further, there is no guarantee that even if we comply with the rules and regulations adopted by the card networks, we will be able to maintain our compliance. We also cannot guarantee that such compliance will prevent illegal or improper use of our payments systems or the theft, loss or misuse of the credit card data of customers or participants. Any such event would harm our reputation and business.

---

## **Table of Contents**

### **We face potential liability for the fraudulent activities of organizers and their employees, participants and our employees.**

We have potential liability for losses caused by the fraudulent activities of our organizers or their employees. An organizer, or one of an organizer's employees, could use a stolen or counterfeit credit card or credit card number to record a false sales transaction, or intentionally fail to deliver merchandise, events, activities or services sold in an otherwise valid transaction. We may also face potential liability for credit card fraud by participants who register for an activity or complete a transaction through our applications. A participant could use a stolen credit card or a stolen credit card number in a credit card-not-present transaction, to register for an activity or event or purchase merchandise or services. In a traditional credit card-present transaction, if the merchant uses the credit card, receives authorization for the transaction from the credit card issuing bank and verifies the signature on the back of the credit card against the paper receipt signed by the individual using the credit card, the credit card issuing bank remains liable for any loss. In a fraudulent credit card-not-present transaction, we could be liable to the credit card issuing bank for any loss arising from the transaction, even if we receive authorization for the transaction from the same credit card issuing bank. In addition, we face potential fraud if our employees misappropriate or disclose to others who misappropriate the credit card or other sensitive information of organizers or participants. We have implemented systems and procedures designed to detect and reduce the impact of organizer, participant and employee fraud, but we cannot guarantee that these measures are or will be effective. It is possible that incidents of fraud could increase in the future, and they may remain undetected for extended periods of time if our systems and procedures are not effective. Significant or recurring credit card fraud could adversely affect our business, financial condition and operating results.

### **We may face significant chargeback liability if our customers refuse or cannot reimburse chargebacks resolved in favor of participants who register through our applications.**

We may have potential liability for chargebacks associated with the transactions we process for certain of our organizer customers. If a billing dispute relating to a transaction is not ultimately resolved in favor of the organizer, the disputed transaction is charged back to our bank and credited to the credit card account of the participant. If we or our processing banks are unable to collect the chargeback from the organizer's account, or if the organizer refuses or is financially unable to reimburse us for the chargeback amount, we bear the risk of loss for the amount of the refund paid to the participant's credit card account. We have in the past experienced chargebacks related to cancelled and fraudulent events and transactions. Significant or recurring chargeback amounts could adversely affect our business, operating results and financial condition.

### **Our business is subject to a variety of U.S. and foreign laws, many of which are unsettled and still developing, and which could subject us to claims or otherwise harm our business.**

We are subject to a variety of laws in the United States and abroad that are continuously evolving and developing, and that are costly to comply with, can require significant management time and effort and can subject us to claims or other remedies. Existing and future laws and regulations may be adopted, interpreted or implemented in a manner that is inconsistent with our current business practices or that require changes to such practices, our privacy policy, the features and functionality of our applications or the design of our websites. These regulations and laws may cover employment, immigration, taxation, tariffs, user privacy, data protection, pricing, content, copyrights, distribution, electronic contracts and other communications, consumer protection, broadband residential Internet access and the characteristics and quality of services. It is not clear how existing laws governing issues such as property ownership, sales and other taxes, libel and personal privacy apply to the Internet. If we are not able to comply with these laws and regulations or if we become liable under them, we could be directly harmed, and we may be forced to implement new measures to reduce our exposure to this liability. This may require us to expend substantial resources or to discontinue certain practices, which could negatively affect our business, financial condition and results of operations. In addition, the increased attention focused on liability as a result of lawsuits and legislative proposals could harm our reputation or otherwise harm our business.

### **Our quarterly operating results are volatile, subject to seasonal fluctuations and difficult to predict, all of which may adversely affect our stock price.**

Our quarterly operating results have fluctuated in the past and may fluctuate significantly in the future due to a variety of factors, many of which are outside of our control. For example, we generally experience seasonality due to the greater number of activities and events during the spring and summer months in North America. Other factors that may contribute to the variability of our quarterly and annual results include:

our ability to accurately forecast revenue and appropriately plan our operating expenses;

our ability to attract new, and increase the engagement and penetration of our existing, activity and event organizers;

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

our ability to increase the number of participants who register for the activities and events offered by our customers using our applications;

our ability to control the cost and time required to transition certain customers to ActiveWorks;

our ability to maintain and effectively manage an adequate rate of growth;

our ability to successfully enter new markets and manage our planned global expansion;

our ability to successfully manage and integrate our past and any future acquisitions of businesses, applications or technologies;

our ability to limit interruptions in service and prevent the compromise of customer or participant data;

the effects of natural or man-made catastrophic events;

changes in the laws, regulations and legal standards affecting our business;

our ability to keep pace with changes in technology and the offerings by our competitors;

our ability to provide a high-quality participant experience through our applications and online communities;

our ability to design and implement effective internal controls and processes;

our ability to attract and retain qualified employees and key personnel;

our ability to protect our intellectual property, including our technology platform and our key brands;

our ability to control the costs associated with defending intellectual property infringement and other claims by third parties; and

the impact of worldwide economic conditions, including the resulting effect on consumer spending.

As a result, we believe that quarterly comparisons of our operating results are not necessarily meaningful and that you should not rely on the results of one quarter as an indication of our future performance. In addition, our operating results may continue to vary significantly from one quarter to the next as part of our normal business cycle, which may adversely affect our stock price.

## **Table of Contents**

**If we do not continue to enhance and improve our existing applications and successfully introduce new applications, our ability to maintain the pricing of our applications and to attract and retain organizer customers will be harmed.**

In the past we have grown our business in part through improving the functionality and features of our existing applications and introducing new applications to our customers, such as fundraising, real-time event tracking and merchandising for activities and events. If we fail to continue to offer new applications that increase the number of participants who register online for our customers' activities and events, and improve the ability of our customers to manage their activities and events, we may be unable to maintain the pricing of our applications. We cannot assure you that we will be able to timely and adequately develop additional functions and features or introduce new applications to satisfy the demands of our customers. Further, developing new technologies and applications entails significant technical and business risks. We cannot assure you that any new functions, features or applications will achieve the level of acceptance required for us to generate sufficient revenue to offset our development costs. If we do not continue to enhance and improve the functions and features of our existing applications and successfully introduce new applications, our ability to maintain the pricing of our applications and to attract and retain organizer customers will be harmed.

**Activity and event organizers may not widely adopt our applications to manage the important aspects of their activities and events, which would limit our ability to grow our business.**

Our ability to grow our business and increase revenue depends on our success in educating activity and event organizers about the potential benefits of our cloud computing applications. Cloud computing applications for organizing and managing important aspects of activities and events are relatively new, and have not been widely adopted by activity and event organizers. Concerns about cost, fraud, privacy, security, reliability and other issues may cause activity and event organizers not to adopt our applications. Moreover, activity and event organizers who have already invested substantial resources in other registration and management systems or methods may be reluctant to adopt a new approach like ours to supplement or replace existing systems or methods. If activity and event organizers do not widely adopt applications such as ours, our ability to grow our business will be limited.

**If we fail to expand our customers' use of our applications, our ability to execute our growth strategy and increase our revenue will be limited.**

Many of our organizer customers initially make a purchase of only one or a limited number of our available applications or use our applications for only one or a limited number of their activities or events. Our ability to grow our business and increase revenue is dependent on our ability to further penetrate our existing customers by selling additional applications to them, and by increasing the number of activities and events for which they deploy our applications. If we fail to expand the usage of our applications by our existing customers, our ability to execute our growth strategy and increase our revenue will be limited.

**Many individuals are using devices other than personal computers to access the Internet. If users of these devices do not widely adopt solutions we develop for these devices, our business could be adversely affected.**

The number of people who access the Internet through devices other than personal computers, including mobile telephones, personal digital assistants, smart phones and handheld tablets or computers, has increased dramatically in the past few years and is projected to continue to increase. If we are unable to develop mobile solutions to meet the needs of our users, our business could suffer. Additionally, as new devices and new platforms are continually being released, it is difficult to predict the problems we may encounter in developing versions of our solutions for use on these alternative devices, and we may need to devote significant resources to the creation, support, and maintenance of such devices.

**If we are unable to increase the percentage of participants who register through our websites, our ability to grow our business will be impaired.**

In addition to expanding and increasing penetration within our organizer customer base, the growth of our business depends on our ability to increase the percentage of participants who elect to register for activities and events through our websites. Our ability to increase the percentage of participants who register through our websites depends on our ability to make our online registration and reservation processes simple, efficient, secure and cost-effective, as well as on our ability to develop applications, such as our online communities, activity and event information and searchable database of events, that encourage participants to use our websites. Our ability to increase participant use of our websites also depends on the ability and willingness of our organizer customers to increase the awareness of our websites to their participants. We cannot control the level of effort that organizers expend or the extent to which any of them will be successful in increasing awareness of our websites among their participants. We may not be able to prevent organizers from devoting greater resources to support other registration methods developed by them or other third parties. If we are unable to increase the percentage of participants who register for activities and events through our websites, our ability to grow our business will be impaired.

**We may not be successful in expanding into new business areas within the activity and event registration and management market, which could harm our business and future prospects.**

Our long-term strategic plan involves expanding our applications into new business areas within the activity and event registration and management market. We cannot assure you that our efforts to expand our business in this manner will succeed. We also cannot assure you that we will develop any new applications required to successfully compete in these new business areas in a cost-effective or timely manner. The lack of market acceptance of such efforts or our inability to generate satisfactory revenue to offset the development costs could harm our business and limit our future prospects.

**The sales cycle for certain of our applications can be long, and we may not recognize revenue until completion of the entire sale, which makes it difficult for us to forecast our operating results.**

It can take us between three and nine months to complete a sale to an activity or event organizer, and at times it may take up to one year or longer. The period between our initial contact with a potential customer and the completion of a sale may be relatively long due to several factors, including:

many activities and events occur only annually;

our need to educate potential customers about the uses, benefits, safety and reliability of our applications;

activity and event organizers have budget cycles which can affect the timing of purchases; and

some organizers, such as park and recreation department administrators, have lengthy internal approval processes before having the required authority to purchase our applications.

In addition, our customers may demand customization of the applications we provide them. As a result, these sales opportunities may require us to devote greater sales and technical resources, increasing the cost and time required to complete sales. As a result, it is difficult to predict when particular sales will occur or be completed, which adversely impacts our ability to accurately forecast our operating results.



---

## **Table of Contents**

### **Negative factors affecting the activities and events market have an adverse effect on our business and revenue.**

We primarily generate revenue from the registration and reservation fees paid by the participants in the activities and events offered by our organizer customers. As a result, our business is directly affected by factors affecting the activities and events market, including global, national or local consumer trends, adverse weather, security concerns or environmental disasters. Our performance is also subject to economic conditions and their impact on levels of consumer spending, which may remain depressed, or be subject to further deterioration, for the foreseeable future. Some of the factors that have had and may continue to have an adverse impact on discretionary consumer spending include general economic conditions, unemployment, consumer debt, reductions in net worth, disruptions in the residential real estate or mortgage markets, higher taxation, energy prices or interest rates and decreases in consumer confidence and other macroeconomic factors. Because spending for activities is generally considered to be discretionary, declines in consumer spending may have a more negative effect on our business than on those businesses that sell products or services considered to be necessities. Unfavorable changes in the above factors or in other business and economic conditions affecting our activity and event customers and their participants could cause organizers to cancel activities, result in fewer participants using our applications to register for activities, lower our profit margins, cause our activity and event customers to terminate their relationship with us or default on their payment obligations to us, any of which would have a material adverse effect on our financial condition and operating results.

### **If our customers do not renew their agreements for our applications, our business and operating results will suffer.**

We currently generate a majority of our revenue from customers who have entered into contracts with us with terms ranging from three to seven years. However, we have a number of customers with contract terms under three years. Our customers are not obligated to renew their contracts with us. Even if our customers perceive our applications to be of value, budgetary, economic or other competitive pressures may prevent some customers from renewing their contracts. If we are not successful in continuing to renew or extend the terms of our contracts with our existing customers, our business and operating results will suffer.

### **Our ability to grow our business will be impaired if we do not provide high quality customer support in a timely and cost-effective manner.**

Our ability to maintain and increase our customer base and the number of participants who use our applications depends significantly on our ability to provide high quality levels of service and support. Complaints or negative publicity about our service or support could severely diminish confidence in or use of our applications. We spend significant time and resources to hire, train and retain our service and support personnel. In addition, we are required to hire temporary employees each year to provide customer service and support during peak registration seasons. These temporary employees require training and education and take time to reach full productivity. If we are not successful in timely hiring, training and retaining our service and support personnel or otherwise fail to provide high quality service and support to organizers and participants, our ability to grow our business will be impaired.

### **Our ability to improve our operating margins may be limited by the requirements imposed by our government agency customers.**

We acquired the state hunting and fishing business of Automated License Systems and Central Trust Bank in October 2008 and the campground registration business of ReserveAmerica in January 2009. As of March 31, 2013, we had approximately 55 state or provincial customers in North America that are utilizing our technology for registration and management services related to hunting, fishing, and campgrounds. Our government agency customers often require us to customize our applications and provide additional services to their participants to qualify for these contracts. For example, we are typically required to maintain call centers for these customers to allow participants to register telephonically and receive telephonic customer service and support. We continue to focus on ways to encourage participants to use the self-service features available through our websites, however, each year we are required to hire temporary employees and independent contractors to staff our call centers during peak registration periods. A number of our state customers require us to maintain a physical call center located in their particular state. Additionally, our state customers typically require us to provide third-party audits of our operations. These additional requirements are costly to comply with and add to the complexity of our business. If we are unable to properly manage and control the cost of the additional services required by our government agency customers, our operating margins will suffer and our business and results would be harmed.

### **We may be unsuccessful in expanding our operations outside of North America, which could negatively impact our growth strategy, revenue and future growth.**

Our headquarters are located in the United States. To date, we have operated primarily in North America. Expansion outside of North America is an important aspect of our future growth strategy. Our ability to expand outside of North America involves various risks and difficulties, including:

incurring significant expenses in advance of generating material revenue as we attempt to establish our presence in international markets;

operating in unfamiliar competitive environments;

distraction of management and company resources;

different participant preferences and participation patterns than those in North America;

varied, unfamiliar and unclear legal and regulatory requirements and restrictions;

potentially greater susceptibility to fraud and security breaches;

pricing controls, legal, political or systemic restrictions on the ability of U.S. companies to compete with foreign competitors or otherwise do business in foreign countries;

less extensive adoption of the Internet as a commerce medium or information source and increased restrictions on privacy or the use of customer and participant data;

lack of infrastructure to adequately conduct electronic commerce transactions and data storage and management;

difficulties in staffing and managing foreign operations;

greater difficulty in accounts receivable collection;

currency fluctuations or other restrictions on foreign currency; and

potential adverse tax consequences.

As a result of these obstacles, we may find it difficult to expand outside of North America or we may be unsuccessful in our attempt to do so, which would negatively impact our growth strategy, revenue and future growth.

---

## **Table of Contents**

### **We may not timely and effectively scale and adapt our existing technology and network infrastructure to ensure that our websites are accessible with little or no perceptible load times.**

A key element in our continued growth is the ability of organizers and participants to access our websites at all times with little or no perceptible load times. This has become increasingly difficult to achieve as our applications have become more complex and our user traffic has increased. Strains on the capacity of our technology infrastructure caused by growth in the numbers of organizers and participants accessing our websites, new applications and features and overall engagement on our websites, especially at the opening of the registration period for a popular activity, have in the past resulted, and may in the future result in, slower load times or system failures. We have experienced website disruptions, outages and other performance problems due to a variety of factors, including maintaining multiple legacy systems, infrastructure changes, power failure, telecommunication outages, human or software errors and capacity constraints caused by overwhelming numbers of users accessing our websites simultaneously. If our websites are not available when users attempt to access them or do not function as expected, our customers may select another option to organize and manage their activities and events and participants may select alternative means of researching and registering for activities and events, each of which would negatively impact our business.

We expect to continue to make significant investments to upgrade our technology and network infrastructure to handle increased usage and to enable the timely and effective release of new applications. These upgrades and expansions are complex and in the past have resulted, and in the future could result, in website outages or inefficiencies or operational failures. To the extent that we do not effectively address infrastructure challenges, upgrade our systems as needed and continually develop our technology and network architecture, our business and operating results may be harmed.

### **If Internet search engines methodologies are modified or our search result page rankings decline for other reasons, participant engagement in our websites and online communities could decline.**

We depend in part on various Internet search engines to direct a significant amount of traffic to our websites. Our ability to maintain the number of potential participants directed to our websites is not entirely within our control. Our competitors' search engine optimization, or SEO, efforts may result in their websites receiving a higher search result page ranking than ours, or Internet search engines could revise their methodologies in an attempt to improve search results, which could adversely affect placement of our search result page rankings. If search engine companies revise their search algorithms in ways that are detrimental to new participant growth on our websites or in ways that make it more difficult for organizers or participants to use our websites, or if competitors' SEO efforts are more successful than ours, the overall growth in the numbers of organizers and participants using our websites could slow, participant engagement could decrease, and we could lose existing participants and become less attractive to existing and prospective organizer customers. Our websites have experienced fluctuations in search result rankings in the past, and we anticipate similar fluctuations in the future. Any reduction in the number of participants directed to our website would harm our business and operating results.

### **Our ability to establish, maintain and strengthen our brands in the activities and events market is critical to our growth strategy.**

Promoting and maintaining our brands is critical to our efforts to attract and retain our organizer customers and to increase the number of participants who use our applications. We also believe brand recognition is critical to allow us to effectively compete against the growing number of Internet sites and relatively low initial barriers to entry in certain of our markets. Maintaining, protecting and enhancing our brands is also critical to expanding our base of organizers, end users, advertisers, and other strategic partners, and increasing their engagement with our websites, and will depend largely on our ability to be a technology leader and continue to provide high-quality applications, which we may not do successfully. If we are unable to establish and maintain our brands, including THE ACTIVE NETWORK, ACTIVE, ACTIVE.COM, ACTIVENET, ACTIVEWORKS, REGONLINE, RESERVEAMERICA and STARCITE, as leaders for online registration and management applications in the activities and events market, our business and prospects would be materially and adversely affected.

### **We may experience difficulty in developing marketing services that are attractive to advertisers and promoters.**

The market for marketing services such as ours is relatively new and rapidly evolving. We cannot be certain this market will continue to grow. Our marketing services customers may determine that it is in their best interest to spend their marketing budgets through other forms of promotional or advertising activities. As a result, if we fail to develop compelling marketing services for advertisers and promoters, our ability to sustain and grow our marketing services business would be adversely affected.

### **If we fail to maintain and grow our user base of participants and the data we gain access to from such participants, potential advertisers may not utilize our marketing services, which may result in reduced revenue.**

We use a wide range of data to expand, refine and target our marketing services on behalf of our customers. We gain access to most of this data from participants as they opt-in to receive special offers and other direct marketing opportunities from our marketing services customers and us and the registration process for activities and events using our application services. If we are unable to maintain and grow our user base of participants and the data we gain access to from such participants, potential advertisers may not utilize our marketing services and we may lose significant marketing services revenue.

**We might not be able to attract and retain employees, which could impede our ability to grow and successfully generate our business.**

Any failure to attract and retain qualified, experienced employees could adversely affect our ability to grow our business. To execute our continuing growth plans, we need to increase the size and maintain the quality of our staff of direct sales and business development representatives and technology development staff. To be successful, we must attract and retain highly qualified sales and other personnel with specialized skill sets focused on the activities and events industry. Competition for qualified and experienced sales and other personnel can be intense, and we might not be successful in attracting and retaining such individuals. We have from time to time experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining a sufficient number of highly skilled employees with appropriate qualifications for our business.

**Our business and prospects could be harmed if we lose members of our senior management team.**

On April 30, 2013, we announced that our Board of Directors had appointed Jon Belmonte as our Interim Chief Executive Officer, and had initiated an executive search process to identify a permanent Chief Executive Officer. Our business and prospects depends on our ability to identify and retain a permanent Chief Executive Officer who can assist us in improving our operations and executing on our business plan. Our performance also depends on our ability to retain and motivate our existing executive officers and key employees, including Mr. Belmonte, Darko Dejanovic, our President, and Scott Mendel, our Chief Financial Officer. We do not have long-term employment agreements with any of our executive officers or other key personnel. In addition, we do not maintain key-man insurance on these individuals. The failure to identify and retain a permanent Chief Executive Officer or the loss of the services of any of our executive officers or other key employee for any reason could harm our business.

We also announced on April 30, 2013 that our then-serving Chief Executive Officer and our then-serving Executive Chairman separated from our Company. We had previously entered into Retention Agreements with these executives that provide them with certain rights upon their separation from the Company, including potential severance payments and accelerated vesting of equity awards. We intend to enter into formal agreements with these former executives regarding the terms of their separation from the Company. We cannot assure you that we will be able to enter into agreements with these executives on acceptable terms, or at all, or the impact any such agreements may have on our financial results.

---

## **Table of Contents**

### **If we cannot maintain our corporate culture as we grow and evolve, we could lose the innovation, creativity and teamwork that this culture has fostered.**

We believe that a critical contributor to our success has been our corporate culture, which we believe fosters innovation, creativity and teamwork. Maintaining this corporate culture will become increasingly difficult as we grow and implement the more complex organizational management structures necessary to support our growth and to comply with the requirements imposed on public companies. Failure to maintain and further develop our culture could negatively impact our future success.

### **If the protection of our technology platform, domain name, trademarks and other proprietary rights is inadequate, our business would be harmed.**

Our commercial success is dependent in part on obtaining, maintaining and enforcing our intellectual property rights. We rely on a combination of trade secret, trademark, copyright, trade dress, domain name and patent laws in the United States and in the other jurisdictions in which we operate, together with confidentiality agreements and technical measures, to protect our intellectual property. We pursue the registration of our trademarks, service marks and domain names in the United States. Our registered trademarks in the United States include THE ACTIVE NETWORK, ACTIVE, ACTIVE.COM, ACTIVENET, ACTIVEWORKS, REGONLINE, RESERVEAMERICA and STARCITE. As of March 31, 2013, we have been granted six patents by the United States Patent and Trademark Office and have five patent applications pending in the United States. Our issued patents begin to expire in February 2019. We rely more heavily on trade secret protection than patents to protect our proprietary technology. To protect our trade secrets, we control access to our proprietary systems and technology and enter into confidentiality and invention assignment agreements with our employees and consultants and confidentiality agreements with other third parties. In addition, due to the relatively high cost associated with registering all of our copyrights, we generally rely on common-law copyright laws to protect these rights.

The steps we have taken and take in the future to protect our proprietary rights may be inadequate. For example, confidentiality agreements with our employees, licenses, independent contractors and other advisors may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. In addition, third parties may independently discover trade secrets and proprietary information, and in such cases, we may not be able to successfully assert trade secret rights against such parties. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights. If we are unable to obtain, maintain and enforce intellectual property protection covering our technology platform, brands and domain names, others may be able to make, use or sell products that are substantially similar to ours without incurring the sizeable development costs that we have incurred, which would adversely affect our ability to compete.

In addition, the domain names for the websites that we maintain are important to our business. The regulation of domain names in the United States and in foreign countries is unclear and subject to change. Governing bodies may establish additional top-level domains, appoint additional domain name registrars or modify the requirements for holding domain names. As a result, we cannot assure you that we will be able to acquire or maintain relevant domain names. The relationship between regulations governing domain names and laws protecting trademarks and similar proprietary rights is also unclear. As a result, we may be unable to prevent third parties from acquiring domain names that are similar to, infringe upon or otherwise decrease the value of our domain names, and trademarks and other proprietary rights. Any such inability could have a material adverse effect on our business, results of operations, financial condition and prospects.

### **Intellectual property claims against us could be costly and could hurt our business, operating results, financial condition and prospects.**

We cannot predict whether third parties will assert claims of infringement or other intellectual property claims against us. If we are forced to defend against third party claims, whether they are with or without merit or are determined in our favor, we could face expensive and time consuming litigation, which could distract our technical and management personnel. In the past, we received a notice from a third party alleging that our Internet fundraising program and related website operations infringe patents published by such third party. In the future, we may receive other notices from, or have lawsuits filed against us by, third parties alleging infringement. If an infringement claim is determined against us, we may be required, or deem it advisable, to develop non-infringing intellectual property or enter into costly royalty or licensing agreements. Such royalty or licensing agreements, if required, may be unavailable on terms that are acceptable to us, or at all. If a third party successfully asserts an infringement claim against us and we are required to pay monetary damages or royalties or we are unable to develop suitable non-infringing alternatives or license the infringed or similar intellectual property on reasonable terms and on a timely basis, it could significantly harm our business. In addition, third parties may seek to invalidate our intellectual property.

### **As a result of becoming a public company, we are obligated to develop and maintain proper and effective internal controls over financial reporting.**

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

We maintain a documented system of internal controls, which is reviewed and monitored by the Audit Committee and tested by the Company's internal audit department. The internal audit department reports the results of testing to the Audit Committee who in turn report the results to the Board of Directors. We believe we have a well-designed system to maintain adequate internal controls over the business; however, we cannot be certain that our controls will be adequate in the future or that adequate controls will be effective in preventing or detecting all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. The design of any system of control is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

### **Our reserves for state sales taxes may not be sufficient.**

Certain states in which we operate impose sales, purchase and use taxes on transactions completed through our applications. At this time, many of our systems do not automatically capture the sales, purchase and use taxes we are required to remit to these states.

As a result, we are required to analyze our transactions, and reserve an appropriate amount for the payment of state sales, purchase and use taxes. We regularly review the procedures we use to calculate our sales tax obligations as well as our sales tax reserves, and make adjustments when appropriate. Although we believe that our sales tax reserves are adequate, we may not be fully reserved and it is possible that we may be obligated to pay amounts in excess of our reserves.

### **We may not be able to realize the tax benefits associated with the net operating losses we have recorded to date.**

As of December 31, 2012, we had federal tax net operating loss carry forwards of approximately \$182 million which will begin to expire in 2019 and continue to expire through 2032 and state tax net operating loss carry forwards of approximately \$142 million which began to expire between 2013 and 2032 and foreign NOL carryforwards of approximately \$11 million as of December 31, 2012 which expire between 2029 and 2032. If we do not maintain sufficient profitability prior to the expiration of these net operating loss carry forwards, then we will not be able to fully use such tax attributes to our benefit. Additional limitations on the annual use of these net operating loss carry forwards may also apply due to subsequent issuances of our stock.

## **Table of Contents**

**Covenants in our Credit Agreement may restrict our operations, and if we do not effectively manage our business to comply with these covenants, our financial condition and liquidity could be adversely affected.**

In December 2011, we entered into a Credit Agreement (the "Credit Agreement"), which was subsequently amended in July 2012, with Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS") and J.P. Morgan Securities LLC (upon the amendment of the Credit Agreement), as Joint Lead Arrangers, MLPFS as Sole Book Manager, and the lenders from time to time party thereto. We must comply with various covenants under our Credit Agreement that limit our ability to, among other things:

incur or assume liens or additional debt or provide guarantees in respect of obligations of other persons;

pay cash dividends or distributions or redeem or repurchase capital stock;

prepay, redeem or repurchase debt;

make loans and investments;

enter into agreements that restrict distributions from our subsidiaries;

sell assets and capital stock of our subsidiaries;

enter into certain transactions with affiliates; and

consolidate or merge with or into, or sell substantially all of our assets to, another person.

In addition, under our Credit Agreement, we are required to maintain specified financial ratios. Our ability to meet these financial covenants can be affected by events beyond our control, and we may be unable to meet these tests. In addition, our failure to maintain effective internal controls to measure compliance with these financial covenants could affect our ability to take corrective actions on a timely basis, and could result in us being in breach of this covenant. Our Credit Agreement provides that our breach or failure to satisfy certain covenants constitute an event of default. Upon the occurrence of an event of default, the lenders could elect to terminate any commitment under our Credit Agreement and declare all amounts outstanding to be immediately due and payable. If we are unable to repay those amounts, our financial condition could be adversely affected. In addition, termination of our Credit Agreement could also adversely impact our liquidity.

**Our cash, cash equivalents and short-term investments are subject to a risk of loss based upon the solvency of the financial institutions in which they are maintained.**

We maintain the majority of our cash and cash equivalents in accounts with major financial institutions within the United States, in the form of demand deposits and money market accounts. Our deposits in these institutions may generally exceed the amounts of insurance provided, or deposits may not at all be covered by insurance. If any of these institutions become insolvent, it could substantially harm our financial condition and we may lose some, or all, of such deposits.

**If our goodwill, amortizable intangible assets or property, plant and equipment become impaired, we may be required to record a significant charge to earnings.**

We review our goodwill, intangible and long-lived assets for impairment annually in the fourth quarter or whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. Significant negative industry or economic trends, a decline in the market price of our common stock, reduced estimates of future cash flows or disruptions to our business could indicate that goodwill, intangible or long-lived assets might be impaired. If, in any period, our stock price decreases to the point where our market capitalization is less than our book value, this could also indicate a potential impairment and we may be required to record an impairment charge in that period. For example, during the first quarter of 2013, we experienced a decline in the Company's market capitalization resulting in the market capitalization being below its book equity value. We considered whether the decline in the stock price was an indicator of goodwill impairment and concluded that no event or change in circumstance had occurred that would more likely than not reduce the fair market value of any reporting unit below its carrying amount and therefore an interim impairment analysis was not triggered. Our valuation methodology for assessing impairment requires management to make judgments and assumptions based on historical experience and to rely on projections of future operating performance. Changes in our estimates, such as forecasted cash flows and discount rates, would affect the estimated fair value of the reporting units which could result in a material goodwill impairment charge, particularly in the technology reporting unit, as the fair value of the Company's technology reporting exceeded its respective carrying value by a narrower margin than the marketing reporting unit. We operate in highly competitive environments and projections of future operating results and cash flows may vary significantly from actual results. Additionally, if our analysis results in impairment to our goodwill, intangibles or long-lived assets, we would be required to record a non-cash charge to earnings in our financial statements during a period in which such impairment is determined to exist. Any of these factors could have a negative impact on our operating results.

**Changes in accounting standards and subjective assumptions, estimates and judgments by management related to complex accounting matters could significantly change our reported or expected financial results.**

Generally accepted accounting principles and related accounting pronouncements, implementation guidelines and interpretations with regard to a wide range of matters that are relevant to our business, including but not limited to, revenue recognition, allowances for doubtful accounts, software development costs, stock-based compensation, business combinations, impairment of goodwill, intangible assets and long-lived assets, and accounting for income taxes are highly complex and involve many subjective assumptions, estimates and judgments by our management. Changes in these rules or their interpretation or changes in underlying assumptions, estimates or judgments by our management could significantly change our reported or expected financial performance.

**We are currently in the process of transitioning certain of our customers who are using the legacy systems we inherited in our acquisitions to ActiveWorks. Until we complete this transition, we may not be able to compare our key business metrics on a period-to-period basis in a manner consistent with the rest of our business, and as a result, our ability to manage our business could be adversely affected.**

We manage our business based in part on key business metrics regarding the total number of customer organizations we serve and the total number of registrations we process during a specific financial period. We are currently in the process of transitioning our customers who are currently using the legacy systems we inherited in our acquisitions to ActiveWorks. Until we complete this transition, participants for certain activities and events will continue registering through these legacy systems. Certain of these legacy systems do not track customers and registrations in a manner consistent with the rest of our business. As a result, we need to use manual processes to accumulate these metrics, which could lead to errors. If we are unable to accurately compare our key business metrics on a period-to-period basis, our ability to manage our business could be adversely affected.

**If the estimates and assumptions we use to determine the size of our target market, customer groups or the verticals within customer groups are inaccurate, our future growth rate may be limited and our business would be harmed.**

We calculate the size of our target market, customers groups and verticals within customer groups, based on data published by third parties and on assumptions that we have made based on that data. We have not independently verified any third-party information and cannot assure you of its accuracy or completeness. While we believe our market size information is generally reliable, such information is inherently imprecise. In addition, our projections, assumptions and estimates of future opportunities within our target market are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including



## **Table of Contents**

those described in this risk factors section. If third-party data proves to be inaccurate or we make errors in our assumptions based on that data, our future growth rate may be limited. In addition, these inaccuracies or errors may cause us to misallocate capital and other business resources, which could harm our business. For example, in the third quarter of 2011, we identified previously unreported registration data during the first and second quarters of 2011. As a result, we underreported the number of registrations for these prior periods. We identified that the underreporting resulted primarily from the prior lack of the reporting systems of two new state customers. The underreporting had no impact on our prior financial statements, nor do we believe the underreporting had a material adverse effect on our business.

### **Risks Relating To Ownership Of Our Common Stock**

#### **Our stock price may be volatile.**

The market price of our common stock may be subject to significant fluctuations. Factors that could affect our stock price include the following:

fluctuations in our operating results or the operating results of our competitors;

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

changes in the estimates of the future size and growth rate of our markets;

changes in accounting principles or changes in interpretations of existing principles, which could affect our financial results;

conditions and trends in the markets we serve;

changes in general economic, industry and market conditions;

success of competitive applications and services;

changes in market valuations or earnings of our competitors;

changes in our pricing policies or the pricing policies of our competitors;

announcements of significant new applications, contracts, acquisitions or strategic alliances by us or our competitors;

changes in legislation or regulatory policies, practices or actions;

the commencement or outcome of litigation involving our company, our general industry or both;

recruitment or departure of key personnel;

changes in our capital structure, such as future issuances of securities or the incurrence of debt;

actual or expected sales of our common stock by the holders of our common stock; and

the trading volume of our common stock.

In addition, the U.S. and worldwide stock markets in general have experienced significant price and trading volume fluctuations, and the market prices of technology and Internet companies have generally been extremely volatile and have experienced sharp share price and trading volume changes. These broad market fluctuations may adversely affect the trading price of our common stock.

**The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain qualified board members.**

As a public company, we are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, the listing requirements of the New York Stock Exchange and other applicable securities rules and regulations. Compliance with these rules and regulations increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and operating results. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal controls over financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and internal controls over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could harm our business and operating results. Although we have already hired additional employees to comply with these requirements, we may need to hire more employees in the future, which will increase our costs and expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time-consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

Any new rules and regulations may increase the cost for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified executive officers and members of our board of directors, particularly to serve on our Board committees.

As a result of our public disclosure requirements, our business and financial condition has become more visible, which we believe may result in threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and operating results could be harmed, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and harm our business and operating results.

## **Table of Contents**

### **We do not expect to declare any dividends on our common stock in the foreseeable future.**

We currently intend to invest our future earnings, if any, to fund the development and growth of our business. The payment of dividends will be at the discretion of our Board of Directors and will depend on our results of operations, capital requirements, financial condition, future prospects, restrictions imposed by applicable law, any limitations on payments of dividends present in any debt agreements we may enter into and other factors our Board of Directors may deem relevant. Consequently, stockholders may need to rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends should not purchase our common stock.

### **Our directors, executive officers and significant stockholders hold a substantial portion of our stock, which may lead to conflicts of interest with other stockholders over corporate transactions and other corporate matters.**

As of March 31, 2013, our directors, executive officers and beneficial holders of 10% or more of our outstanding common stock beneficially owned approximately 35% of our outstanding common stock, including restricted stock units awards vested and stock options exercisable within 60 days after March 31, 2013. We are not aware of any stockholder or voting agreements or understandings between or among our current directors, officers or beneficial holders of 10% or more of our outstanding common stock. However, these stockholders, acting together, would be able to influence significantly all matters requiring stockholder approval, including the election of directors and significant corporate transactions such as mergers or other business combinations. This control could delay, deter or prevent a third party from acquiring or merging with us, which could adversely affect the market price of our common stock.

### **A large number of shares eligible for public sale or subject to rights requiring us to register them for public sale could depress the market price of our common stock.**

The market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market in the future, and the perception that these sales could occur may also depress the market price of our common stock. From time to time, we may raise additional capital through issuances of equity or convertible debt securities, or issue additional equity for future acquisitions and may be required to register these securities with the SEC. Sales of our common stock pursuant to registration rights could cause our stock price to fall and make it more difficult for you to sell shares of our common stock.

### **If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely or publish negative reports about our company or business, our stock price and trading volume could decline.**

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, publish negative reports about our company or business, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

### **Our future capital needs are uncertain, and we may need to raise additional funds in the future, which may not be available on acceptable terms or at all.**

Our capital requirements will depend on many factors, including:

acceptance of, and demand for, our applications;

the costs of developing new applications or technology;

the timing of transitioning our customers to ActiveWorks;

the number and timing of acquisitions and other strategic transactions; and

the costs associated with the growth of our business.

Our existing sources of cash and cash flows may not be sufficient to fund all of our activities. While we believe we have sufficient capital available through our credit facility and cash flow from operations to conduct our plan of business for at least the next 12 months, we may need to raise additional funds following such time, and such funds may not be available on reasonable terms, or at all. Further, if we incur additional debt, it may increase our leverage relative to our earnings or to our equity capitalization. If we cannot raise funds on acceptable terms, we may not be able to develop or enhance our applications, execute our business plan, take advantage of future opportunities or respond to competitive pressures or unanticipated customer requirements.

**If we issue additional shares of common stock to raise capital or for future acquisition purposes, it may have a dilutive effect on your investment.**

If we raise additional capital through further issuances of equity or convertible debt securities, or issue additional equity for future acquisitions, our existing stockholders could suffer significant dilution in their percentage ownership of us. Moreover, any new equity securities we issue could have rights, preferences and privileges senior to those of holders of our common stock.

**A further tightening of the credit markets may have an adverse effect on our ability to obtain short-term debt financing.**

The recent deterioration of the global economy threatens to cause further tightening of the credit markets, more stringent lending standards and terms and higher volatility in interest rates. Persistence of these conditions could have a material adverse effect on our access to short-term debt and the terms and cost of that debt. As a result, we may not be able to secure additional financing in a timely manner, or at all, to meet our future capital needs which may have an adverse effect on our business, operating results and financial condition.

**Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current directors and management team and limit the market price of our common stock.**

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that may delay or prevent a change in control, discourage bids at a premium over the market price of our common stock and adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock. These provisions include:

dividing our board into three classes, with each class serving a staggered three-year term;

**Table of Contents**

prohibiting our stockholders from calling a special meeting of stockholders or acting by written consent;

permitting our board to issue additional shares of our preferred stock, with such rights, preferences and privileges as they may designate, including the right to approve an acquisition or other changes in control;

establishing an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors;

providing that our directors may be removed only for cause;

providing that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum; and

requiring the approval of our board of directors or the holders of a supermajority of our outstanding shares of capital stock to amend our bylaws and certain provisions of our certificate of incorporation.

Although we believe these provisions collectively provide for an opportunity to receive higher bids by requiring potential acquirers to negotiate with our board, they would apply even if the offer may be considered beneficial by some stockholders. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management team by making it more difficult for stockholders to replace members of our board, which is responsible for appointing the members of our management.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS***Unregistered Sales of Equity Securities*

Period	Total Number of Shares Purchased (1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares that May Yet be Purchased Under the Plans or Programs
January 1 - 31, 2013				
February 1 - 28, 2013				
March 1 - 31, 2013	5,305	\$ 4.19		

- (1) Through our stock incentive plans, 5,305 shares were delivered to us by our employees to satisfy their tax withholding requirements upon vesting of restricted stock for the quarter ended March 31, 2013.

*Use of Proceeds from Registered Securities*

Our initial public offering of common stock was effected through a Registration Statement on Form S-1 (File No. 333-172254) that was declared effective by the Securities and Exchange Commission on May 24, 2011, which registered an aggregate of 12,650,000 shares of our common stock, including 1,650,000 shares that the underwriters had the option to purchase. On May 31, 2011, 8,222,222 shares of common stock were sold on our behalf and 4,427,778 shares of common stock were sold on behalf of the selling stockholders, including 1,650,000 shares sold by the selling stockholders upon exercise in full of the underwriters' option to purchase additional shares, at an initial public offering price of \$15.00 per

## Edgar Filing: ACTIVE NETWORK INC - Form 10-Q

share, for an aggregate gross offering price of \$123,333,330 to us, and \$66,416,670 to the selling stockholders. Merrill Lynch, Pierce, Fenner & Smith and Citigroup Global Markets Inc. served as the managing underwriters of the initial public offering. Following the sale of the shares in connection with the closing of the initial public offering, the offering terminated.

As a result of the offering, we received net proceeds of approximately \$112.6 million, after deducting underwriting discounts and commissions of approximately \$8.6 million and additional offering-related expenses, net of reimbursements, of approximately \$2.1 million. We did not receive any proceeds from the sale of shares by the selling shareholders. No offering expenses were paid directly or indirectly to (i) any of our officers or directors or their associates, (ii) any persons owning 10% or more of any class of our equity securities, or (iii) any of our affiliates.

There was no material change in the use of proceeds from our initial public offering as described in our final prospectus filed with the SEC pursuant to Rule 424(b). From the effective date of the registration statement through March 31, 2013, we have used the net proceeds of the offering for repayment of debt, funding for our recent acquisitions and for general corporate purposes, including expenditures for financing our growth, developing additional application services functionality and features, acquiring new customers and funding capital expenditures. We invested the funds received in short-term, interest bearing, investment-grade securities.

### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

### **ITEM 5. OTHER INFORMATION**

The Company intends to hold its Annual Meeting of Stockholders on Friday, June 21, 2013, at 9:00 a.m., Pacific Time, via live webcast.

### **ITEM 6. EXHIBITS**

The exhibits listed in the accompanying Exhibit Index are filed or incorporated by reference as part of this Quarterly Report on Form 10-Q.

**Table of Contents**

**SIGNATURES**

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

The Active Network, Inc.

Date: May 3, 2013

By: /s/ SCOTT MENDEL  
**Scott Mendel**  
**Chief Financial Officer**

**(Principal Financial and Accounting Officer)**

**Table of Contents****INDEX TO EXHIBITS**

<b>Exhibit</b>	
<b>Number</b>	<b>Description</b>
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated pursuant to the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated pursuant to the Securities Exchange Act of 1934, as amended.
32.1*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS**	XBRL Instance Document.
101.SCH**	XBRL Taxonomy Extension Schema Document.
101.CAL**	XBRL Taxonomy Calculation Linkbase Document.
101.DEF**	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB**	XBRL Taxonomy Label Linkbase Document.
101.PRE**	XBRL Taxonomy Presentation Linkbase Document.

\* These certifications are being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of The Active Network, Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

\*\* Pursuant to applicable securities laws and regulations, we are deemed to have complied with the reporting obligation relating to the submission of interactive data files in such exhibits and are not subject to liability under any anti-fraud provisions of the federal securities laws as long as we have made a good faith attempt to comply with the submission requirements and promptly amend the interactive data files after becoming aware that the interactive data files fail to comply with the submission requirements. Users of this data are advised that, pursuant to Rule 406T, these interactive data files are deemed not filed and otherwise are not subject to liability.