

AETHER SYSTEMS INC
Form 10-Q
May 15, 2003

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 10-Q

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

For the Period Ended March 31, 2003

or

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

Commission File Number: 000-27707

AETHER SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

52-2186634

(IRS Employer Identification Number)

11460 Cronridge Dr., Owings Mills, MD

(Address of principal executive offices)

21117

(Zip Code)

(Registrant's telephone number, including area code): **(410) 654-6400**

Securities registered Pursuant to Section 12(b) of the Act: **NONE.**

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Securities Registered Pursuant to Section 12(g) of the Act:

Common Stock, Par Value \$.01
Convertible Subordinated Notes Due 2005

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 is an accelerated filer (as defined in Rule 12b-2 of the Act) Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

As of May 14, 2003, 42,509,699 shares of the Registrant's common stock, \$.01 par value per share, were outstanding.

AETHER SYSTEMS, INC.

QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTER ENDED MARCH 31, 2003

INDEX

PART I: FINANCIAL INFORMATION

ITEM 1: FINANCIAL STATEMENTS

Condensed consolidated balance sheets as of March 31, 2003-unaudited and December 31, 2002

Condensed consolidated statements of operations and comprehensive loss for the three months ended March 31, 2003 and 2002-unaudited

Condensed consolidated statements of cash flows for the three months ended March 31, 2003 and 2002-unaudited

Notes to the unaudited condensed consolidated financial statements

ITEM 2: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

ITEM 3: QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

ITEM 4: CONTROLS AND PROCEDURES

PART II: OTHER INFORMATION

ITEM 1: LEGAL PROCEEDINGS

ITEM 2: CHANGES IN SECURITIES AND USE OF PROCEEDS

ITEM 3: DEFAULTS UPON SENIOR SECURITIES

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

ITEM 5: OTHER INFORMATION

ITEM 6: EXHIBITS AND REPORTS ON FORM 8-K

PART I FINANCIAL INFORMATION**ITEM I: FINANCIAL STATEMENTS****AETHER SYSTEMS, INC.****CONDENSED CONSOLIDATED BALANCE SHEETS****(IN THOUSANDS, EXCEPT SHARE DATA)**

	March 31, 2003	December 31, 2002
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 53,756	\$ 68,593
Short-term investments	261,496	255,825
Trade accounts receivable, net	24,876	22,788
Inventory, net	13,118	19,664
Assets held for sale	4,800	5,250
Net investment in sales-type leases (current)	1,822	1,656
Prepaid expenses and other current assets	16,299	16,002
Total current assets	376,167	389,778
Property and equipment, net	20,267	19,301
Investments	2,006	2,228
Goodwill	25,369	25,369
Intangibles, net	13,712	15,027
Net investment in sales-type leases (non-current)	8,099	6,691
Other noncurrent assets, net	16,155	15,015
	\$ 461,775	\$ 473,409
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of notes payable	\$ 26	\$ 4
Accounts payable	6,014	1,902
Accrued expenses	16,683	19,963
Accrued employee compensation and benefits	7,210	7,336
Deferred revenue	16,884	14,234
Current portion of restructuring reserve	8,246	8,651
Accrued interest payable	205	2,529
Total current liabilities	55,268	54,619

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Convertible subordinated notes payable and other notes payable, less current portion	154,939	154,942
Deferred revenue	13,397	11,789
Restructuring reserve	22,099	23,801
Other long term liabilities	834	858
Total liabilities	246,537	246,009
Stockholders' equity:		
Preferred stock, \$0.01 par value; 1,000,000 shares authorized; 0 shares issued and outstanding at March 31, 2003 and December 31, 2002		
Common stock, \$0.01 par value; 1,000,000,000 shares authorized; 42,290,197 and 42,249,280 shares issued and outstanding at March 31, 2003 and December 31, 2002, respectively	423	422
Additional paid-in capital	2,587,236	2,586,613
Accumulated deficit	(2,377,271)	(2,364,831)
Foreign currency translation adjustment	4,178	3,722
Unrealized gain on investments available for sale	672	1,474
Total stockholders' equity	215,238	227,400
Commitments and Contingencies		
Total liabilities and stockholders' equity	\$ 461,775	\$ 473,409

See accompanying notes to condensed consolidated financial statements.

AETHER SYSTEMS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

(IN THOUSANDS, EXCEPT PER SHARE DATA)

(unaudited)

	Three Months Ended March 31,	
	2003	2002
Subscriber revenue	\$ 18,992	\$ 12,309
Engineering services revenue	79	1,623
Software and related services revenue	5,849	6,022
Device sales	4,317	3,718
Total revenue	29,237	23,672
Cost of subscriber revenue	9,845	7,354
Cost of engineering services revenue	21	803
Cost of software and related services revenue	1,273	2,176
Cost of device sales	4,715	3,431
Total cost of revenue	15,854	13,764
Gross profit	13,383	9,908
Operating expenses:		
Research and development (exclusive of option and warrant expense)	4,438	8,626
General and administrative (exclusive of option and warrant expense)	11,710	17,375
Selling and marketing (exclusive of option and warrant expense)	3,385	10,154
Depreciation and amortization	4,250	10,749
Option and warrant expense:		
Research and development	204	1,258
General and administrative	321	587
Selling and marketing	84	376
Impairment of intangibles and other assets	442	2,377
Restructuring charge	526	12,556
Total operating expenses	25,360	64,058
Operating loss	(11,977)	(54,150)
Other income (expense):		
Interest income	2,364	2,502
Interest expense	(2,602)	(4,763)
Gain on extinguishment of debt		6,262
Equity in losses of investments	(59)	(2,773)

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Investment losses, including impairments, net	(166)	(4,235)
Minority interest		1,523
Loss before cumulative effect of change in accounting principle	(12,440)	(55,634)
Cumulative effect of change in accounting principle relating to adoption of SFAS No. 142		(129,306)
Net loss	\$ (12,440)	\$ (184,940)
Other comprehensive income (loss):		
Unrealized holding losses on investments available for sale	(802)	(1,503)
Foreign currency translation adjustment	456	82
Comprehensive loss	\$ (12,786)	\$ (186,361)
Net loss per share-basic and diluted before cumulative effect of change in accounting principle		
	\$ (0.29)	\$ (1.32)
Cumulative effect of change in accounting principle relating to adoption of SFAS No. 142		(3.08)
Net loss per share-basic and diluted	\$ (0.29)	\$ (4.40)
Weighted average shares outstanding basic and diluted		
	42,271	41,993

See accompanying notes to condensed consolidated financial statements.

AETHER SYSTEMS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(DOLLARS IN THOUSANDS)

(unaudited)

	Three Months Ended March 31,	
	2003	2002
Cash flows from operating activities:		
Net loss	\$ (12,440)	\$ (184,940)
Adjustments to reconcile net loss to net cash used by operating activities:		
Cumulative effect of a change in accounting principle		129,306
Depreciation and amortization	4,250	10,749
Amortization of loan fees	280	245
Provision for doubtful accounts	121	1,063
Depreciation on leased devices	113	
Equity in losses of investments	59	2,773
Option and warrant expense	609	2,221
Minority interest		(1,523)
Gain on extinguishment of debt		(6,262)
Impairment of intangibles and other assets	447	2,377
Investment losses, including impairments	166	4,235
Changes in assets and liabilities, net of acquired assets and liabilities:		
(Increase) decrease in trade accounts receivable	(2,209)	533
Decrease in inventory	3,565	8
(Increase) decrease in prepaid expenses and other assets	(1,256)	1,599
Increase in investment in sales-type leases	(1,573)	
Increase (decrease) in accounts payable	4,113	(5,019)
Decrease in accrued expenses, accrued employee compensation and benefits and interest payable	(5,731)	(5,751)
Increase in deferred revenue	4,258	267
Increase (decrease) in restructuring reserve and other long term liabilities	(2,112)	9,520
Net cash used in operating activities	(7,340)	(38,599)
Cash flows from investing activities:		
Sales and maturities of short-term investments	165,265	
Purchases of short-term investments	(171,741)	
Acquisitions, net of cash acquired		(3,486)
Purchases of property and equipment	(976)	(2,342)
Purchase and sale of long-term investments, net		762
Increase in other intangible assets	(60)	(50)

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Net cash used in investing activities	(7,512)	(5,116)
Cash flows from financing activities:		
Proceeds from issuance of common stock	15	415
Repayment of notes payable including buyback of convertible debt		(8,848)
Repayments on notes payable/credit facility		(252)
Net cash provided by (used in) financing activities	15	(8,685)
Net decrease in cash and cash equivalents	(14,837)	(52,400)
Cash and cash equivalents, at beginning of period	68,593	522,177
Cash and cash equivalents, at end of period	\$ 53,756	\$ 469,777
Supplemental disclosure of cash flow information:		
Cash paid during the period for interest	\$ 4,647	\$ 8,704

Supplemental disclosure of non-cash investing and financing activities:

For the three months ended March 31, 2003 and 2002, the Company incurred unrealized holding losses associated with its investments available for sale totaling \$802 and \$1,503, respectively. These amounts have been reported as decreases in members' capital and stockholders' equity.

In connection with the acquisition of certain assets of @Track Communications, Inc. on March 18, 2002, the Company issued a note payable for \$12.0 million. Such amount has been allocated to the fair value of the assets purchased.

During the three months ended March 31, 2003, the Company transferred \$2,981 of inventory leased to a customer under an operating lease to fixed assets.

See accompanying notes to condensed consolidated financial statements.

AETHER SYSTEMS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE (1) ORGANIZATION, DESCRIPTION OF THE BUSINESS AND BASIS OF PRESENTATION

(a) ORGANIZATION AND DESCRIPTION OF THE BUSINESS

Aether Systems, Inc. (the Company) was originally formed as Aeros, L.L.C. in January 1996. The Company changed its name to Aether Technologies International, L.L.C. effective August 1996 and to Aether Systems L.L.C. effective September 1999. Immediately prior to the completion of its initial public offering of common stock on October 26, 1999, the limited liability company was converted into a Delaware corporation and the Company s name was changed to Aether Systems, Inc.

The Company provides the services, software and support necessary for businesses to extend existing and future applications from the desktop to almost all currently available personal digital assistant (PDA) operating systems and their respective wireless devices. Through the Aether Fusion™ approach, the Company develops, deploys and manages wireless solutions built on industry standard technology and backed by the Company s expertise in wireless hosting, software and services.

The Company operates in three business segments: enterprise mobility solutions, mobile government, and transportation.

In the first quarter of 2002, the Company expanded its products, services, and customer base in the transportation market through the acquisition of certain assets and licenses from @Track Communications, Inc. (@Track). @Track is a leading provider of wireless-based vehicle fleet management and intelligent mobile-asset-tracking solutions.

(b) BASIS OF PRESENTATION

The condensed consolidated financial statements include the accounts of Aether Systems, Inc. and its subsidiaries. The condensed consolidated balance sheet as of March 31, 2003, the condensed consolidated statements of operations and other comprehensive loss and cash flows for the three months ended March 31, 2003 and 2002 have been prepared by the Company, without audit. In the opinion of management, all adjustments have been made, which include normal recurring adjustments necessary to present fairly the condensed consolidated financial statements. Operating results for the three months ended March 31, 2003 are not necessarily indicative of the operating results for the full year. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. The Company believes that the disclosures provided are adequate to make the information presented not misleading. These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and related notes included in the Company s Annual Report for the year ended December 31, 2002 on Form 10-K.

NOTE (2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**(a) USE OF ESTIMATES**

The preparation of condensed consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the condensed consolidated financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates. Estimates are used in accounting for, among other things, long-term contracts, allowances for uncollectible receivables, inventory obsolescence and warranty reserves, recoverability of long-lived assets and investments, depreciation and amortization, employee benefits, restructuring accruals, taxes and contingencies. Estimates and assumptions are reviewed periodically and the effects of revisions are reflected in the consolidated financial statements in the period they are determined to be necessary.

(b) ACCOUNTS RECEIVABLE

Accounts receivable consists of the following:

(IN THOUSANDS)	March 31, 2003		December 31, 2002	
Billed	\$	27,927	\$	26,155
Unbilled		4,408		4,322
Allowance for doubtful accounts		(7,459)		(7,689)
Total Accounts Receivable	\$	24,876	\$	22,788

The Company believes all unbilled accounts receivable will be billed within the next twelve months.

(c) IMPAIRMENTS

Goodwill and intangible assets acquired in a purchase business combination and determined to have an indefinite useful life are not amortized, but instead tested for impairment at least annually. Intangible assets with estimable useful lives are amortized over their respective estimated useful lives to their estimated residual values. Long-lived assets, such as property and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset.

In connection with the adoption of SFAS No. 142, "Goodwill and Other Intangibles" on January 1, 2002, the Company was required to perform a transitional impairment analysis and reflect the changes as of January 1, 2002. The Company completed its analysis in the third quarter of 2002 and recorded a charge through cumulative effect of change in accounting principle of \$129.3 million. As such, the Company's condensed consolidated financial statements for the three months ended March 31, 2002 have been adjusted to reflect this change. This cumulative effect in accounting principle (which is a non-cash charge) was not included in the results issued in the Company's press release dated May 6, 2003 furnished to the SEC on Form 8-K dated May 9, 2003.

(d) STOCK OPTIONS AND WARRANTS

The Company accounts for equity-based employee compensation arrangements in accordance with the provisions of Accounting Principle Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees", and related interpretations including FIN 44. Under APB No. 25, compensation expense is based upon the difference, if any, on the date of grant, between the fair value of the Company's stock and the exercise price. All equity-based awards to non-employees are accounted for at their fair value in accordance with SFAS No. 123. SFAS No. 123 established accounting and disclosure requirements using a fair-value-based method of accounting for stock-based employee compensation plans. As allowed by SFAS No. 123, the Company has elected to continue to apply the intrinsic-value-based method of accounting described above, and has adopted only the disclosure requirements of SFAS No. 123. The following table illustrates the effect on net income if the fair-value-based method had been applied to all outstanding and unvested awards in each period:

(IN THOUSANDS, EXCEPT PER SHARE DATA)	Three Months Ended March 31,	
	2003	2002
Net loss as reported	\$ (12,440)	\$ (184,940)
Add stock-based employee compensation expense included in reported net income	609	2,221
Deduct total stock-based employee compensation expense determined under fair-value-based method for all awards	(5,992)	(21,329)
Pro forma net loss	\$ (17,823)	\$ (204,048)
Pro forma net loss per share	\$ (0.42)	\$ (4.86)

(e) EARNINGS PER SHARE

Basic net income (loss) per share is computed by dividing net income (loss) available to common stockholders for the period by the weighted average number of common shares outstanding during the period. Diluted net income (loss) per share is computed by dividing the net income (loss) for the period by the weighted average number of common and dilutive common equivalent shares outstanding during the period. As the Company has had a net loss in each of the periods presented, basic and diluted net loss per share are the same.

(f) RECLASSIFICATIONS

Certain fiscal year 2002 amounts have been reclassified to conform to the current year presentation.

(g) RECENT ACCOUNTING PRONOUNCEMENTS

i) SFAS No. 145

In April 2002, the FASB issued SFAS No. 145, Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections. SFAS No. 145 rescinded FASB No. 4 and 64 in relation to reporting gains and losses from extinguishment of debt. The Statement amended SFAS No. 4 and 64 and requires gains and losses from extinguishment of debt to be

classified as extraordinary items only if they meet the criteria in Opinion 30. Applying the provisions of Opinion 30 differentiates between normal recurring operations of a company and transactions that are unusual or infrequent in nature. SFAS No. 145 also amended Statement No. 13, to the effect that sale-leaseback accounting for certain lease modifications should be accounted for in the same manner as sale-leaseback transactions. In connection with the adoption of this statement, the Company reclassified \$6.3 million of extraordinary gains from early extinguishment of debt to continuing operations for the three months ended March 31, 2002.

(ii) SFAS No. 146

In June 2002, the FASB issued SFAS No. 146, Accounting for Costs Associated with Exit or Disposal Activities. SFAS No. 146 requires that a liability for a cost associated with an exit or disposal activity be recognized when incurred at fair value. The Statement in turn eliminates the definition and requirements of EITF Issue 94-3. SFAS No. 146 is effective for exit or disposal activities that are initiated after December 31, 2002. The adoption of SFAS No. 146 may have an effect on the timing of restructuring charges taken, if and when they occur. The Company adopted the provisions of SFAS No. 146 on January 1, 2003 and is applying the provisions on a prospective basis.

(iii) SFAS No. 148

In December 2002, the FASB issued Statement No. 148 Accounting for Stock-Based Compensation Transition and Disclosure an amendment of FASB Statement No. 123. The Statement is effective for fiscal years ended after December 15, 2002. SFAS No. 148 requires new disclosures about the effect of stock-based employee compensation on reported results. The Statement requires that effects be disclosed more prominently by specifying the form, content and location of those disclosures. SFAS No. 148 permits several ways of transitioning to the fair value method of accounting for stock-based compensation, however the Statement does not require that companies discontinue the intrinsic value method of accounting for stock-based compensation. The Company will continue to use the intrinsic value method of accounting for stock-based compensation and has adopted the disclosure requirements of the Statement.

(iv) Financial Interpretation No. 45

In November 2002, the FASB issued FASB Interpretation No. 45, Guarantors Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others. Interpretation No. 45 discusses the necessary disclosures to be made by a guarantor in its financial statements about its obligations under certain guarantees that it has issued. It also discusses that the guarantor must recognize a liability, at fair value at the inception of the guarantee, for the obligation incurred in issuing the guarantee.

The Company has certain guarantees disclosable under FIN 45 as follows:

The Company has guaranteed the payment of sublease rentals to our landlord on several properties the Company sublet. The maximum guarantee on these properties is approximately \$2.7 million.

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In the Company's Mobile Government Segment, the Company may have to pay liquidated damages in some cases if the Company's sub-contractors do not perform on time. In addition, the Company sometimes indemnifies certain of its customers against damages, if any, they might incur as a result of a claim brought against them related to third party software imbedded in the Company's products. The Company is unable to estimate the maximum exposure of such indemnifications due to the inherent uncertainty and the varying nature of the contractual terms.

The following table provides the changes in the Company's product warranties:

Warranty liability balance at December 31, 2002	\$	788
Liabilities accrued for warranties issued during the period		925
Warranty claims paid during the period		(134)
Warranty liability balance at March 31, 2003	\$	1,579

(v) Financial Interpretation No. 46

In January 2003, the FASB issued Interpretation No. 46, Consolidation of Variable Interest Entities, an interpretation of ARB No. 51. This interpretation addresses the consolidation by business enterprises of variable interest entities as defined in the interpretation. The interpretation applies immediately to variable interests in variable interest entities created or obtained after January 31, 2003. The interpretation is applied to the enterprise no later than the end of the first reporting period beginning after June 15, 2003. The application of this interpretation is not expected to have a material effect on the Company's financial statements. The interpretation requires certain

disclosures in financial statements issued after January 31, 2003 if it is reasonably possible that the Company will consolidate or disclose information about variable interest entities when the interpretation becomes effective.

(vi) EITF 00-21

In November 2002, the Emerging Issues Task Force issued its final consensus on Revenue Arrangements with Multiple Deliverables. This guidance is effective for revenue arrangements entered into in fiscal periods beginning after June 15, 2003 or alternatively, entities may elect to report the change in accounting as a cumulative-effect adjustment. EITF 00-21 discusses criteria necessary to determine when an arrangement may be viewed to have separate units of accounting (and thus revenue) and when an arrangement should be viewed as a single unit of accounting. The Company is currently performing an analysis of how this might affect revenue recognition for arrangements the Company routinely enters into that have multiple deliverables.

NOTE (3) ASSET PURCHASE

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On March 15, 2002, the Company expanded its products, services, and customer base in the transportation and logistics market through the acquisition of certain assets and licenses from @Track. @Track was a leading provider of wireless-based vehicle fleet management and intelligent mobile-asset-tracking solutions. The purchase consideration (excluding approximately \$800,000 of purchase related expenses) was \$15.0 million consisting of \$3.0 million in cash and a \$12.0 million note payable. The note was interest bearing at 5.75% and was paid in equal monthly cash installments from May 2002 through July 2002. This acquisition has been accounted for under the purchase method of accounting and, accordingly, the assets acquired and liabilities assumed have been recorded at their estimated fair value as of the acquisition date. The allocation of the purchase price for this acquisition, which was determined based on a third party appraisal, is summarized as follows:

Current assets	\$	1,153
Property and equipment		636
Identifiable intangibles		2,815
Goodwill		11,196
Total consideration	\$	15,800

The following summary, prepared on a pro forma basis, presents the results of the Company's operations as if the @Track asset purchase had been completed as of January 1, 2002:

(IN THOUSANDS, EXCEPT PER SHARE DATA)	Three months ended March 31, 2002 (UNAUDITED)	
Revenue	\$	29,971
Net loss	\$	(184,058)
Net loss per share - basic and diluted	\$	(4.38)

The unaudited pro forma results of operations are not necessarily indicative of what actually would have occurred if the @Track asset purchase had taken place as of January 1, 2002, nor are they a projection of the Company's results of operations for any future period.

NOTE (4) RESTRUCTURING CHARGES

On January 1, 2003, the Company adopted SFAS No. 146, which requires that a liability for a cost associated with an exit or disposal activity be recognized when incurred at fair value. The Company recorded a charge to earnings in the first quarter of 2003 of \$526,000 related to a workforce reduction. Employee separation benefits under the restructuring plan include severance, medical, and other benefits. As of March 31, 2003, the accrued liability related to all restructuring activities was \$30.3 million.

A portion of the accruals taken in prior periods were utilized in the first quarter of 2003. During the first quarter of 2002, Aether continued its expense reduction plan as part of its integration strategy focused on improving operational efficiencies and the implementation of other measures in order to reduce planned expenses. These efforts have resulted in the further consolidation of excess facilities and elimination of positions. As a result of this restructuring plan, the Company recorded a charge to earnings in the first quarter of 2002 of \$12.6 million (including adjustments of approximately \$3.4 million). The charge related mainly to a workforce reduction of

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over 225 positions and the closing or consolidation of three facilities. Employee separation benefits of \$3.6 million under the restructuring plan include severance, medical, and other benefits. Facility closure and other costs of \$8.9 million include expected losses on subleases, brokerage commissions, asset impairment charges, contract termination costs and other costs.

The calculation of the restructuring accrual related to expected losses on subleases required the Company to make estimates concerning: (1) the expected length of time to sublease the facility; (2) the expected rental rates on subleases; and, (3) estimated brokerage expenses associated with executing the sublease. The Company uses the assistance of independent real estate brokerage firms in developing these estimates and the Company's estimates may be impacted by future economic trends. The expected losses on subleases have not been discounted. If the actual results differ from the Company's estimates, the Company may be required to adjust its restructuring accrual related to expected losses on subleases, including recording additional losses.

A rollforward of the restructuring accrual is as follows:

	Employee Separation Benefits	Facility Closure Costs and Other	Total
Total restructuring liability as of December 31, 2001	\$ 1,602	\$ 26,215	\$ 27,817
2002 Restructuring:			
First quarter	2,690	6,491	9,181
Adjustments made during the first quarter	941	2,434	3,375
Second quarter	110	2,348	2,458
Adjustments made during the second quarter	(27)	594	567
Third quarter	587	6,522	7,109
Adjustments made during the third quarter		1,335	1,335
Fourth quarter	1,280	8,651	9,931
Adjustments made during the fourth quarter	21	3,767	3,788
Total restructuring charge for period ending December 31, 2002	\$ 5,602	\$ 32,142	\$ 37,744
Second quarter reclassification from other accruals		774	774
Third quarter non-cash charges		(6,522)	(6,522)
Fourth quarter non-cash charges		1,903	1,903
Cash payments	(6,781)	(22,483)	(29,264)
Total restructuring liability as of December 31, 2002	\$ 423	\$ 32,029	\$ 32,452
2003 Restructuring:			
First quarter	\$ 526	\$	\$ 526
Total restructuring charge for period ending March 31, 2003	\$ 526	\$	\$ 526
Cash payments	(663)	(1,970)	(2,633)
Total restructuring liability as of March 31, 2003	\$ 286	\$ 30,059	\$ 30,345

NOTE (5) RELATED PARTY TRANSACTIONS

NOTE (3) ASSET PURCHASE

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In the ordinary course of business, the Company has entered into sales arrangements with entities in which the Company has equity interests or entities that have an equity interest in the Company. For the three months ended March 31, 2003 and 2002, the Company recorded revenue from these related parties aggregating approximately \$156,000 and \$731,000, respectively. As of March 31, 2003 and December 31, 2002, the Company had gross accounts receivable from these related entities aggregating approximately \$126,000 and \$200,000, respectively.

During 2003, the Company received services from stockholders and other related entities including Huber Oros (benefit coordination services). These companies are considered related parties due to the fact that they are significant stockholders or entities with familial relationships with members of the senior management of the Company or with significant shareholders of the Company. For the three months ended March 31, 2003 and 2002, these expenses were \$30,000 and \$162,000, respectively.

NOTE (6) LEGAL PROCEEDINGS

Aether is among the hundreds of defendants that are named in the putative class action lawsuits filed in the United States District Court for the Southern District of New York relating to allegedly fraudulent initial public offering practices, which are being