

TIVO INC  
Form 8-K  
May 28, 2008

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of**

**The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) May 28, 2008

**TIVO INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**000-27141**  
(Commission  
File Number)

**77-0463167**  
(IRS Employer  
Identification No.)

**2160 Gold Street, Alviso, California**  
(Address of principal executive offices)

**95002**  
(Zip Code)

**Registrant's telephone number, including area code (408)519-9100**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**ITEM 8.01 OTHER EVENTS.**

On May 28, 2008, we announced financial results for our first quarter ended April 30, 2008. Net service revenues for the quarter were \$48.4 million in the first quarter of fiscal year 2009, a decrease from the \$54.2 million in the same prior year period. Net technology revenues were \$6.4 million, which included recognition of Comcast development revenues of \$4.0 million. This was an increase of 63%, compared with \$3.9 million in the first quarter of fiscal year 2008. The net income for the quarter was \$3.6 million or \$0.04 per basic and diluted share, compared to a net income of \$835,000 or \$0.01 per share, for the three months ended April 30, 2007.

As of April 30, 2008 our total subscriptions were approximately 3.8 million. TiVo-Owned subscription gross additions were 48,000 for the quarter, compared to 57,000 in the first quarter fiscal year 2008. TiVo-Owned net subscription losses were 17,000 compared to additions of 1,000 in the first quarter of fiscal year 2008. Our monthly churn rate increased to 1.3% for the quarter ended April 30, 2008 as compared to 1.1% in the year ago period. The installed base of MSO/Broadcasters TiVo subscriptions has declined to approximately 2.1 million from 2.6 million a year ago.

**TIVO INC.****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

(In thousands, except per share and share amounts)

(unaudited)

|   | Three Months Ended<br>April 30, |           |
|---|---------------------------------|-----------|
|   | 2008                            | 2007      |
| Revenues  |                                 |           |
| Service revenues                                    | \$ 48,443                       | \$ 54,155 |
| Technology revenues                                 | 6,407                           | 3,932     |
| Hardware revenues                                   | 5,945                           | 2,293     |
| Net revenues  | 60,795                          | 60,380    |
| Cost of revenues                                    |                                 |           |
| Cost of service revenues (1)                        | 11,194                          | 10,155    |
| Cost of technology revenues (1)                     | 3,920                           | 3,507     |
| Cost of hardware revenues                           | 10,344                          | 10,648    |
| Total cost of revenues                              | 25,458                          | 24,310    |
| Gross margin  | 35,337                          | 36,070    |
| Research and development (1)                        | 14,748                          | 14,245    |
| Sales and marketing (1)                             | 5,936                           | 5,303     |
| Sales and marketing, subscription acquisition costs | 1,159                           | 5,790     |
| General and administrative (1)                      | 10,336                          | 11,222    |
| Total operating expenses                            | 32,179                          | 36,560    |
| Income (loss) from operations                       | 3,158                           | (490)     |
| Interest income                                     | 579                             | 1,416     |
| Interest expense and other                          | (87)                            | (83)      |
| Income before income taxes                          | 3,650                           | 843       |
| Provision for income taxes                          | (13)                            | (8)       |
| Net income  | \$ 3,637                        | \$ 835    |

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|   |    |             |    |            |
|---|----|-------------|----|------------|
| Net income per common share - basic   | \$ | 0.04        | \$ | 0.01       |
| Net income per common share - diluted   | \$ | 0.04        | \$ | 0.01       |
| Weighted average common shares used to calculate basic net income per share   |    | 99,386,826  |    | 96,829,128 |
| Weighted average common shares used to calculate diluted net income per share |    | 102,709,583 |    | 98,046,685 |
| (1) Includes stock-based compensation expense as follows :                    |    |             |    |            |
| Cost of service revenues  | \$ | 191         | \$ | 157        |
| Cost of technology revenues   |    | 606         |    | 463        |
| Research and development  |    | 1,982       |    | 1,628      |
| Sales and marketing   |    | 540         |    | 476        |
| General and administrative  |    | 2,158       |    | 1,916      |

## TIVO INC.

## CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except share amounts)

(unaudited)

|  | April 30,<br>2008 | January 31,<br>2008 |
|--|-------------------|---------------------|
| <b>ASSETS</b>  |                   |                     |
| <b>CURRENT ASSETS</b>  |                   |                     |
| Cash and cash equivalents  | \$ 92,800         | \$ 78,812           |
| Short-term investments   | 1,798             | 20,294              |
| Accounts receivable, net of allowance for doubtful accounts of \$1,219 and \$1,194   | 10,427            | 20,019              |
| Inventories  | 13,889            | 17,748              |
| Prepaid expenses and other, current  | 3,446             | 3,792               |
| Total current assets   | 122,360           | 140,665             |
| <b>LONG-TERM ASSETS</b>  |                   |                     |
| Property and equipment, net  | 11,330            | 11,349              |
| Purchased technology, capitalized software, and intangible assets, net   | 12,718            | 13,522              |
| Prepaid expenses and other, long-term  | 1,793             | 1,513               |
| Long-term investments  | 4,296             |                     |
| Total long-term assets   | 30,137            | 26,384              |
| Total assets   | \$ 152,497        | \$ 167,049          |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>  |                   |                     |
| <b>LIABILITIES</b>   |                   |                     |
| <b>CURRENT LIABILITIES</b>   |                   |                     |
| Accounts payable   | \$ 8,066          | \$ 23,615           |
| Accrued liabilities <sup>(1)</sup>   | 23,256            | 28,834              |
| Deferred revenue, current  | 58,163            | 59,341              |
| Total current liabilities  | 89,485            | 111,790             |
| <b>LONG-TERM LIABILITIES</b>   |                   |                     |
| Deferred revenue, long-term  | 33,950            | 38,128              |
| Deferred rent and other  | 227               | 309                 |
| Total long-term liabilities  | 34,177            | 38,437              |
| Total liabilities  | 123,662           | 150,227             |
| <b>COMMITMENTS AND CONTINGENCIES</b>   |                   |                     |
| <b>STOCKHOLDERS' EQUITY</b>  |                   |                     |
| Preferred stock, par value \$0.001:  |                   |                     |
| Authorized shares are 10,000,000;  |                   |                     |
| Issued and outstanding shares - none   |                   |                     |
| Common stock, par value \$0.001:   |                   |                     |
| Authorized shares are 275,000,000;   |                   |                     |
| Issued shares are 102,034,090 and 100,098,426, respectively, and outstanding shares are 101,854,510 and 99,970,947, respectively | 102               | 100                 |
| Additional paid-in capital   | 802,186           | 792,654             |
| Accumulated deficit <sup>(1)</sup>   | (771,449)         | (775,086)           |
| Less: Treasury stock, at cost - 179,580 and 127,479, respectively  | (1,300)           | (846)               |

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|   |            |            |
|---|------------|------------|
| Unrealized gain/loss of marketable securities | (704)      |            |
| Total stockholders' equity                    | 28,835     | 16,822     |
| Total liabilities and stockholders' equity    | \$ 152,497 | \$ 167,049 |

(1) The consolidated balance sheet as of January 31, 2008 has been revised to reflect the increase of \$1,784,000 in accrued liabilities with a corresponding increase in accumulated deficit to correct immaterial errors related to an under accrual of non-income based taxes for fiscal year 2007 and fiscal year 2006.

## TIVO INC.

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(unaudited)

|  | Three Months Ended<br>April 30, |                    |
|--|---------------------------------|--------------------|
|  | 2008                            | 2007               |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>  |                                 |                    |
| Net income   | \$ 3,637                        | \$ 835             |
| Adjustments to reconcile net income to net cash used in operating activities:      |                                 |                    |
| Depreciation and amortization of property and equipment and intangibles            | 2,572                           | 2,620              |
| Stock-based compensation expense   | 5,477                           | 4,640              |
| Inventory write-down   | 1,349                           |                    |
| Allowance for doubtful accounts  | 25                              |                    |
| Changes in assets and liabilities:   |                                 |                    |
| Accounts receivable  | 9,567                           | 2,483              |
| Inventories  | 2,510                           | 19                 |
| Prepaid expenses and other   | 66                              | 621                |
| Accounts payable   | (15,649)                        | (22,009)           |
| Accrued liabilities  | (5,578)                         | (6,745)            |
| Deferred revenue   | (5,356)                         | (8,530)            |
| Deferred rent and other long-term liabilities                                      | (82)                            | (147)              |
| Net cash used in operating activities  | \$ (1,462)                      | \$ (26,213)        |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES</b>  |                                 |                    |
| Purchases of short-term and long-term investments                                  | (4)                             | (3,037)            |
| Sales of short-term investments  | 13,500                          |                    |
| Acquisition of property and equipment  | (1,649)                         | (1,160)            |
| Acquisition of capitalized software and intangibles                                |                                 | (375)              |
| Net cash provided by (used in) investing activities                                | \$ 11,847                       | \$ (4,572)         |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES</b>  |                                 |                    |
| Proceeds from issuance of common stock related to exercise of common stock options | 4,057                           | 852                |
| Treasury Stock - repurchase of stock for tax withholding                           | (454)                           | (85)               |
| Net cash provided by financing activities  | \$ 3,603                        | \$ 767             |
| <b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>                        | <b>\$ 13,988</b>                | <b>\$ (30,018)</b> |
| <b>CASH AND CASH EQUIVALENTS:</b>  |                                 |                    |
| Balance at beginning of period   | 78,812                          | 89,079             |
| Balance at end of period   | \$ 92,800                       | \$ 59,061          |

## TIVO INC.

## OTHER DATA

Subscriptions

| (Subscriptions in thousands)  | Three Months Ended<br>April 30, |              |
|---|---------------------------------|--------------|
|   | 2008                            | 2007         |
| <b>TiVo-Owned Subscription Gross Additions</b>                        | <b>48</b>                       | <b>57</b>    |
| <b>Subscription Net Additions/(Losses):</b>                           |                                 |              |
| TiVo-Owned  | (17)                            | 1            |
| MSOs/Broadcasters   | (128)                           | (103)        |
| <b>Total Subscription Net Additions/(Losses)</b>                      | <b>(145)</b>                    | <b>(102)</b> |
| <b>Cumulative Subscriptions:</b>                                      |                                 |              |
| TiVo-Owned  | 1,728                           | 1,727        |
| MSOs/Broadcasters   | 2,073                           | 2,615        |
| <b>Total Cumulative Subscriptions</b>                                 | <b>3,801</b>                    | <b>4,342</b> |
| <b>% of TiVo-Owned Cumulative Subscriptions paying recurring fees</b> | <b>61%</b>                      | <b>59%</b>   |

Included in the 3,801,000 subscriptions are approximately 163,000 lifetime subscriptions that have reached the end of the period TiVo uses to recognize lifetime subscription revenue. These lifetime subscriptions no longer generate subscription revenue.

**Subscriptions.** Management reviews this metric, and believes it may be useful to investors, in order to evaluate our relative position in the marketplace and to forecast future potential service revenues. The TiVo-Owned lines refer to subscriptions sold directly or indirectly by TiVo to consumers who have TiVo-enabled DVRs and for which TiVo incurs acquisition costs. The MSOs/Broadcasters lines refer to subscriptions sold to consumers by MSOs/Broadcasters such as DIRECTV, Cablevision Mexico, and Comcast and for which TiVo expects to incur little or no acquisition costs. Additionally, we provide a breakdown of the percent of TiVo-Owned subscriptions for which consumers pay recurring fees, including on a monthly and a prepaid one, two, or three year basis, as opposed to a one-time prepaid product lifetime fee.

We define a subscription as a contract referencing a TiVo-enabled DVR for which (i) a consumer has committed to pay for the TiVo service and (ii) service is not canceled. We count product lifetime subscriptions, under which consumers may purchase a subscription that is valid for the lifetime of a particular DVR, until both of the following conditions are met: (i) the period we use to recognize product lifetime subscription revenues ends; and (ii) the related DVR has not made contact to the TiVo service within the prior six-month period. Product lifetime subscriptions past this period which have not called into the TiVo service for six months are not counted in this total. During the quarter ended April 30, 2006, we discontinued general sale of the product lifetime service option. During the quarter ended January 31, 2008, we began offering product lifetime service subscriptions only to existing customers and during the quarter ended April 30, 2008 we began offering product lifetime subscriptions to new customers. Effective November 1, 2007, we have extended the period we use to recognize product lifetime subscription revenues from 48 months to 54 months for product lifetime subscriptions acquired on or before October 31, 2007. Additionally, we also increased the amortization period to 60 months for new product lifetime subscriptions acquired on or after November 1, 2007. We are not aware of any uniform standards for defining subscriptions and caution that our presentation may not be consistent with that of other companies. Additionally, the subscription fees that some of our MSO/Broadcasters pay us may be based upon a specific contractual definition of a subscriber or subscription which may not be consistent with how we define a subscription for our reporting purposes.

## TIVO INC.

## OTHER DATA - KEY BUSINESS METRICS

| TiVo-Owned Churn Rate                  | Three Months Ended<br>April 30,                |              |
|--|--|--------------|
|  | 2008   | 2007         |
|  | (In thousands, except<br>churn rate per month) |              |
| Average TiVo-Owned subscriptions       | 1,737  | 1,729        |
| TiVo-Owned subscription cancellations  | (65)   | (56)         |
| <b>TiVo-Owned Churn Rate per month</b> | <b>-1.3%</b>                                   | <b>-1.1%</b> |

***TiVo-Owned Churn Rate per Month.*** Management reviews this metric, and believes it may be useful to investors, in order to evaluate our ability to retain existing TiVo-Owned subscriptions (including both monthly and product lifetime subscriptions) by providing services that are competitive in the market. Management believes factors such as service enhancements, service commitments, higher customer satisfaction, and improved customer support may improve this metric. Conversely, management believes factors such as increased competition, lack of competitive service features such as high definition television recording capabilities for our low cost product offerings, and increased price sensitivity may cause our TiVo-Owned Churn Rate per month to increase.

We define the TiVo-Owned Churn Rate per month as the total TiVo-Owned subscription cancellations in the period divided by the Average TiVo-Owned subscriptions for the period (including both monthly and product lifetime subscriptions), which then is divided by the number of months in the period. We calculate Average TiVo-Owned subscriptions for the period by adding the average TiVo-Owned subscriptions for each month and dividing by the number of months in the period. We calculate the average TiVo-Owned subscriptions for each month by adding the beginning and ending subscriptions for the month and dividing by two. We are not aware of any uniform standards for calculating churn and caution that our presentation may not be consistent with that of other companies.

| Subscription Acquisition Costs                      | Three Months Ended<br>April 30, |               | Twelve Months Ended<br>April 30, |               |
|---|---------------------------------|---------------|----------------------------------|---------------|
|   | 2008                            | 2007          | 2008                             | 2007          |
|   | (In thousands, except SAC)      |               |                                  |               |
| Sales and marketing, subscription acquisition costs | \$ 1,159                        | \$ 5,790      | \$ 26,419                        | \$ 23,774     |
| Hardware revenues                                   | \$ (5,945)                      | \$ (2,293)    | \$ (45,450)                      | \$ (42,162)   |
| Cost of hardware revenues                           | \$ 10,344                       | \$ 10,648     | \$ 91,614                        | \$ 107,714    |
| <b>Total Acquisition Costs</b>                      | <b>5,558</b>                    | <b>14,145</b> | <b>72,583</b>                    | <b>89,326</b> |
| <b>TiVo-Owned Subscription Gross Additions</b>      | <b>48</b>                       | <b>57</b>     | <b>267</b>                       | <b>395</b>    |
| <b>Subscription Acquisition Costs (SAC)</b>         | <b>\$ 116</b>                   | <b>\$ 248</b> | <b>\$ 272</b>                    | <b>\$ 226</b> |

***Subscription Acquisition Cost or SAC.*** Management reviews this metric, and believes it may be useful to investors, in order to evaluate trends in the efficiency of our marketing programs and subscription acquisition strategies. We define SAC as our total acquisition costs for a given period divided by TiVo-Owned subscription gross additions for the same period. We define total acquisition costs as sales and marketing, subscription acquisition costs less net hardware revenues (defined as gross hardware revenues less rebates, revenue share and market development funds paid to retailers) plus cost of hardware revenues. The sales and marketing, subscription acquisition costs line item includes advertising

expenses and promotion-related expenses directly related to subscription acquisition activities, but does not include expenses related to advertising sales. We do not include third parties subscription gross additions, such as MSOs/Broadcasters gross additions with TiVo subscriptions, in our calculation of SAC because we incur limited or no acquisition costs for these new subscriptions. We are not aware of any uniform standards for calculating total acquisition costs or SAC and caution that our presentation may not be consistent with that of other companies.

| <b>TiVo-Owned Average Revenue per Subscription</b> | <b>Three Months Ended<br/>April 30,</b> |             |
|--|---|-------------|
|  | <b>2008</b>                             | <b>2007</b> |
|  | <b>(In thousands, except ARPU)</b>      |             |
| Total Service revenues                             | \$ 48,443                               | \$ 54,155   |
| Less: MSOs/Broadcasters-related service revenues   | (5,699)                                 | (7,160)     |
| TiVo-Owned-related service revenues                | 42,744                                  | 46,995      |
| Average TiVo-Owned revenues per month              | 14,248                                  | 15,665      |
| Average TiVo-Owned per month subscriptions         | 1,737                                   | 1,729       |
| TiVo-Owned ARPU per month                          | \$ 8.20                                 | \$ 9.06     |

| <b>MSOs/Broadcasters Average Revenue per Subscription</b> | <b>Three Months Ended<br/>April 30,</b> |             |
|---|---|-------------|
|   | <b>2008</b>                             | <b>2007</b> |
|   | <b>(In thousands, except ARPU)</b>      |             |
| Total Service revenues                                    | \$ 48,443                               | \$ 54,155   |
| Less: TiVo-Owned-related service revenues                 | (42,744)                                | (46,995)    |
| MSOs/Broadcasters-related service revenues                | 5,699                                   | 7,160       |
| Average MSOs/Broadcasters revenues per month              | 1,900                                   | 2,387       |
| Average MSOs/Broadcasters per month subscriptions         | 2,136                                   | 2,668       |
| MSOs/Broadcasters ARPU per month                          | \$ 0.89                                 | \$ 0.89     |

**Average Revenue Per Subscription or ARPU.** Management reviews this metric, and believes it may be useful to investors, in order to evaluate the potential of our subscription base to generate revenues from a variety of sources, including subscription fees, advertising, and audience research measurement. ARPU does not include rebates, revenue share and other payments to channel that reduce our GAAP revenues. As a result, you should not use ARPU as a substitute for measures of financial performance calculated in accordance with GAAP. Management believes it is useful to consider this metric excluding the costs associated with rebates, revenue share and other payments to channel because of the discretionary and varying nature of these expenses and because management believes these expenses, which are included in hardware revenues, net, are more appropriately monitored as part of SAC. We are not aware of any uniform standards for calculating ARPU and caution that our presentation may not be consistent with that of other companies.

We calculate ARPU per month for TiVo-Owned subscriptions by subtracting MSOs/Broadcaster-related service revenues (which includes MSOs/Broadcasters' subscription service revenues and MSOs/Broadcasters' -related advertising revenues) from our total reported net service revenues and dividing the result by the number of months in the period. We then divide by Average TiVo-Owned subscriptions for the period, calculated as described above for churn rate. The above table shows this calculation. The decrease in ARPU per month for TiVo-Owned subscriptions during the first quarter ended April 30, 2008 as compared to the prior year period was the result of the recent change in amortization period for product lifetime subscriptions.

We calculate ARPU per month for MSOs/Broadcasters' subscriptions by first subtracting TiVo-Owned-related service revenues (which includes TiVo-Owned subscription service revenues and TiVo-Owned related advertising revenues) from our total reported service revenues. Then we divide average revenues per month for MSOs/Broadcasters' -related service revenues by the average MSOs/Broadcasters' subscriptions for the period. The above table shows this calculation.

Beginning in February 2006, pursuant to the most recent amendment of our agreement with DIRECTV, TiVo began deferring a portion of the DIRECTV subscription fees equal to the fair value of the undelivered development services. Additionally, beginning in February 2007, DIRECTV began paying us a monthly fee for all DIRECTV households with DIRECTV receivers with TiVo service similar to the lower amount paid by DIRECTV for households with DIRECTV receivers with TiVo service deployed since March 15, 2002, subject to a monthly minimum payment by DIRECTV.

### **Forward-Looking Statements**

This report contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements relate to, among other things, TiVo's future business and growth strategies, profitability and financial guidance, distribution of the TiVo service domestically with Comcast and Cox and internationally in Australia, Mexico, Canada and Taiwan, growth and innovation in TiVo's advertising and audience research measurement business, TiVo's software development for the cable industry, the results of TiVo's litigation with EchoStar, how TiVo intends to expand its intellectual property, TiVo's future marketing spend and related activities, and financial performance. Forward-looking statements generally can be identified by the use of forward-looking terminology such as, believe, expect, may, will, intend, estimate, continue, or similar expressions or the negative of those terms or expressions. Such statements involve risks and uncertainties, which could cause actual results to vary materially from those expressed in or indicated by the forward-looking statements. Factors that may cause actual results to differ materially include delays in development, competitive service offerings and lack of market acceptance, the outcome of legal proceedings and claims, as well as the other potential factors described under Risk Factors in the Company's public reports filed with the Securities and Exchange Commission, including the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2008 and all subsequent filings. We caution you not to place undue reliance on forward-looking statements, which reflect an analysis only and speak only as of the date hereof. TiVo disclaims any obligation to update these forward-looking statements.

**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 hereunto duly authorized.

TIVO INC.

Date: May 28, 2008

By: /s/ Cal Hoagland  
Cal Hoagland  
Interim Chief Financial Officer  
(Principal Financial and Accounting Officer)