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May 2, 2005

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Submission – WT Docket No. 02-55 – Continued Qualifications Of Transition Administrator - BearingPoint, Inc.

Dear Ms Dortch:

Preferred Communication Systems, Inc. ("Preferred") is an Economic Area ("EA") and site-based 800 MHz licensee that has been an active participant in this proceeding. As such, Preferred is and will be subject to the decisions and directives of the Transition Administrator ("TA") as the rebanding process moves forward.

By the Commission's own dictates, the TA was to be an "independent party with no financial interest in any 800 MHz licensee."[1] These are absolutely fundamental requirements since the TA is responsible for (a) the oversight of the "financial and administrative aspects of the band reconfiguration," (b) providing "accountability to the reconfiguration process" and (c) ensuring that "band reconfiguration is achieved with minimal disruption to licensees" like Preferred.[2]

Two other interested 800 MHz licensees, Mobile Relay Associates and Skitronics, LLC, already have raised serious and substantive doubts with the Commission about the ability of

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[1] *In the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order,* 19 FCC Rcd. 14969, 15070, ¶ 190 (2004), as amended by *Erratum,* released September 10, 2004, *Erratum,* DA 04-3208, 19 FCC Rcd. 19651 and *Erratum,* DA 04-3459, released October 29, 2004, *recon. and appeal pending ("Initial Report and Order"); Supplemental Order and Order On Reconsideration,* 19 FCC Rcd. 25120 (2004), *recon. and appeal pending ("Supplemental Order")* (collectively, "*Rebanding Orders").*

[2] FCC News Release, *"FCC Adopts Solution To Interference Problem Faced By 800 MHz Public Safety Radio Systems",* July 8, 2004, at p. 2.

BearingPoint, Inc. ("BearingPoint" or "Company"), a key member of the TA team[3], to be fully objective and independent in performing these critical tasks. The Commission has yet to address those legitimate concerns; meanwhile the transition process has already started to move forward. Preferred concurs with the Mobile Relay and Skitronics submissions and urges the Commission to act on them and grant the relief requested.

However, in addition to the facts raised by Mobile Relay and Skitronics, the Commission must now consider other developments relating to BearingPoint that raise further doubts about the Company's ability accurately to carry out the financial and accountability aspects central to the TA's obligations. On April 21, 2005, BearingPoint announced that the U.S. Securities and Exchange Commission ("SEC") had launched an investigation into the Company's accounting practices and that its financial statements dating as far back as mid-2002 could be wrong. Bearing Point reported that the SEC had asked for documents relating to its internal control procedures. This request is in addition to a separate subpoena issued by the SEC relating to alleged fraudulent software sales conducted by a former partner company.[4]

The Company indicated in its filing with the SEC that it did not know when it would be able to submit its audited financial results for 2004. It reported that it expects to record a loss for the three months ended March 31, 2005 and for 2005 as a whole. While the Company outlined several strategies for overcoming its financial problems, it warned that "there can be no assurance that any of these strategies could be effected on satisfactory terms, on a timely basis, or at all, which could result in [the Company] seeking protection under insolvency laws."

Further, the filing reported a series of internal control problems including "inadequate reviews of certain agreements, inadequate training on financial accounting systems and insufficient attention to accounting and fraud risks." Indeed, BearingPoint conceded that there were "material weaknesses and significant deficiencies in [its] internal control over financial accounting."[5] As a result, the Company's own conclusion was that "our internal control over financial reporting was ineffective as of December 31, 2004." Meanwhile, there have been several changes in the CEO

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[3]According to the TA's April 28, 2004 Interim Report, BearingPoint provides over two-thirds of the personnel support for the TA effort. TA Interim Report, at p. 12.

[4]The announcement came in a Form 8-K filing made by BearingPoint with the SEC. A copy of that Form 8-K is Attachment 1 to this letter.

[5]Interestingly, one of the principal tasks assigned to the TA is to "provide an accounting of the funds spent to reconfigure the systems of incumbent operators in the 800 MHz band, including its own salary and expenses." *Initial Report and Order, supra*, at 14989, ¶ 35.

of the Company and it reported that almost 50% of the other senior managers have left or are leaving BearingPoint.

It is difficult to conceive how a major company, particularly in this era of heightened attention to such issues, that cannot keep its own books straight can effectively and accurately implement a complicated spectrum transition that is clearly going to require attention to detail. Moreover, with its continuing financial woes and admitted potential for bankruptcy, can the Commission be sure that BearingPoint will be there to see this several-year task through? Certainly, the Company's filing with the SEC does not contain any such assurances. Further, the Commission clearly would not have confirmed the initial selection of BearingPoint to play such an integral role in the rebanding process had it known that these conditions existed.

The Commission cannot ignore these latest developments. These facts, admitted by the Company itself, do absolutely nothing to instill confidence that BearingPoint, separate and apart from its substantial financial relationship with Nextel, will be able to fulfill its responsibilities as part of the TA team. Certainly, BearingPoint's conceded lack of internal controls in the financial area undermine the credibility of the Company's "Independence Management Plan" to maintain appropriate controls separating those working for Nextel and those working for the TA.

In addition, Preferred's highly experienced independent radio frequency engineering firm has recently identified several serious problems with the database that the TA has assured licensees like Preferred that they can rely on in connection with elections and other rebanding matters. As reflected in the attached letter from Concepts To Operations, Inc., which has filed a number of highly detailed analyses in this proceeding, the TA-sponsored database is fundamentally flawed in at least two key respects.[6] Again, how can the Commission reasonably expect licensees to believe that the TA has the competence necessary to carry out what is admittedly a complicated task if it is operating with an erroneous, inaccurate and flawed database?

For all these reasons, and those set out in the filings by Mobile Relay and Skitronics, Bearing-Point cannot continue as a member of the TA team. It must be removed and the transistion process stayed pending the identification of a reliable, capable and credible substitute.[7]

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[6] See Attachment 2 and exhibits thereto.

[7]Although the TA concept has been used in the past, Preferred questions the Commission's authority to delegate this delicate task to an outside party in the first place. *See, United States Telecom Ass'n v. F.C.C.*, 359 F.3d 554, 565 (D.C. Cir. 2004) (...[T]he case law strongly suggests that [FCC] subdelegations to outside parties are presumed to be improper absent an affirmative showing of congressional authorization.").

Preferred Communication Systems, Inc.

By ______________________
Paul C. Besozzi
Nicholas W. Allard

cc: Charles M. Austin

Attachment 1

8-K 1 d8k.htm FORM 8-K

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) April 19, 2005

BearingPoint, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**001-31451**	**22-3680505**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1676 International Drive
McLean, VA 22102
(Address of principal executive offices)

Registrant's telephone number, including area code (703) 747-3000

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:

☐ 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 2.06 Material Impairments.

During the fourth quarter of the fiscal year ended December 31, 2004 ("FY04"), BearingPoint, Inc. (the "Company" or "we") determined that a triggering event had occurred, which caused the Company to perform a goodwill impairment test. The triggering event resulted from a combination of various factors, including downgrades in the Company's credit rating in December 2004, significant changes in senior management and underperforming foreign legal entities. As a result of an initial impairment analysis, on March 17, 2005 the Company determined that a material, non-cash charge will be taken during the fourth quarter of FY04 as a result of the impairment of its goodwill with respect to the operations in its Europe, the Middle East and Africa ("EMEA") segment.

The Company currently estimates that the amount of the impairment charge will be $250 million to $400 million. The actual amount of the impairment charge is not expected to be finalized until the Company files its audited financial statements for FY04. The actual amount may be different than our estimate, and this difference could be material. The Company does not expect that the impairment charge will result in future cash expenditures.

This Item amends the Item 2.06 disclosure in the Company's Form 8-K filed on March 18, 2005.

Item 4.02(a) Non-Reliance on Previously Issued Financial Statements

On April 19, 2005, our senior management determined that the financial statements filed with the following previously issued reports should not be relied upon because of errors in those financial statements:

- Form 10-Q's for each of the first three quarters of FY04;
- Form 10-K for the six-month transition period ended December 31, 2003; and
- Form 10-K for the fiscal year ended June 30, 2003.

The financial statements listed above are referred to collectively herein as the "Prior Financial Statements." The exact amount of the errors and the periods to which they relate have not been determined and finalized. These errors may also affect our financial statements for the quarterly periods in the six-month period ended December 31, 2003 and the fiscal year ended June 30, 2003, as well as for earlier years and their quarterly periods. In addition, the errors may also affect financial information for the periods mentioned that we included in other disclosures, such as press releases or Form 8-K filings. Our senior management discussed the matter disclosed in this report with our Board of Directors and our independent registered public accountants.

The manual processes and data validation procedures we are employing to evaluate and correct our financial records have resulted in numerous adjustments to date. Some of the adjustments to date have resulted in an increase in net income and some have resulted in a decrease. This process is not yet complete. Accordingly, it is impossible to accurately predict whether, and if so, to what extent, prior periods will be restated. Based on the results of this process to date, we believe that restatements are necessary; however, additional adjustments could increase or reduce the net impact of the adjustments we have identified to date. Given the low levels of net income recorded in certain previous financial periods, small amounts of adjustments may make a material difference, and, therefore, it is highly likely that the ultimate net adjustments will be material and restatements will be necessary.

For more information about the reasons for this determination, see the disclosure in Item 8.01 under the heading "Financial Reporting; Restatement of Financial Statements," which is incorporated by reference into this Item 4.02.

Item 5.04 Temporary Suspension of Trading Under Registrant's Employee Benefit Plans

In light of the determination that investors should not rely upon certain previously-issued financial statements, on April 20, 2005, pursuant to Regulation BTR, the Company sent notices to its directors and executive officers notifying them that in connection with these events there would be a blackout period under the Company's 401(k) Plan, Long-Term Incentive Plan and Employee Stock Purchase Plan (collectively, the "Plans"). The Company has also advised participants in the Plans of the blackout period. The blackout period is necessary because the Registration Statements on Form S-8 that register shares of the Company's common stock that are acquired in connection with the Plans will not be available for use until the Form 10-K for FY04 (the "2004 Form 10-K") and any necessary restatements are filed with the Securities and Exchange Commission (the "SEC").

During the blackout period, the Company's participants in the Plans will not be permitted to purchase the Company's common stock normally offered pursuant to the Plans. The Company determined that it was unable to give advance notice of the blackout period to the directors and executive officers due to events that were unforeseeable to the Company.

The blackout period for participants in the Plans under Regulation BTR begins on April 20, 2005 and will end at 4:00 P.M. EDT on the day in which the Company's 2004 Form 10-K is filed and any necessary restatements of previously filed financial statements are filed with the SEC. It is not known when the 2004 Form 10-K or any restatements of the Company's financial statements will be filed.

Inquiries regarding the blackout period should be directed to David R. Schwiesow, Deputy General Counsel, at 703-747-3496 or 1676 International Drive, McLean, Virginia 22102.

Item 8.01 Other Events

The Company previously disclosed some of the information in this Item 8.01 in its Form 8-K filed on March 18, 2005 (the "March 18 Form 8-K"). This Form 8-K supplements and updates the information included in the March 18 Form 8-K.

The disclosure in this Item 8.01 assumes that the Company will terminate its interim credit facility that matures on May 22, 2005 (the "2004 Credit Facility"). There can be no assurance, however, that we will terminate the 2004 Credit Facility and, until we do so, you should consider the risks related to the 2004 Credit Facility discussed in our March 18 Form 8-K.

As of April 19, 2005, there were no outstanding borrowings under the 2004 Credit Facility; however, there were outstanding letters of credit of approximately $88.1 million.

Certain information set forth in this Item 8.01 is provided pursuant to Regulation FD.

Recent Developments

Financial Reporting; Restatement of Financial Statements

We do not have audited financial statements for the year ended December 31, 2004, and we do not yet have an estimate as to when we will be able to complete our work. As a result, we have failed to comply with the requirements of the Securities Exchange Act of 1934, which requires us to file a Form 10-K within 75 days of the end of our fiscal year, and the requirements of the New York Stock Exchange. In addition, we do not have financial statements for the quarter ended March 31, 2005, and we do not yet have a schedule for when we will be able to prepare quarterly financial statements on a timely basis.

To date, we have identified pre-tax net adjustments decreasing net income by approximately $37 million that will likely require adjustments to prior period financial statements. Of these adjustments, approximately $15 million are likely to affect each of the first three quarters of FY04 and approximately $22 million are likely to affect the results of operations prior to 2004, though the exact amount of the adjustments and the periods to which they relate have not been finalized. The nature and approximate amounts of the more significant adjustments that have been identified based solely on procedures performed to date are: write-downs that were made by a foreign operation relating to contract revenues resulting from wrongful entries of approximately $9 million, charges relating to employee tax equalization issues totaling approximately $18 million, and adjustments arising from detailed engagement contract reviews and other matters totaling approximately $10 million.

The manual processes and data validation procedures we are employing to evaluate and correct our financial records have resulted in numerous adjustments to date. Some of the adjustments have resulted in an increase in net income, and some have resulted in a decrease. This process is not yet completed. Accordingly, it is impossible to accurately predict whether, and if so, to what extent, prior periods will be restated. Based on the results of this process to date, we believe that restatements are necessary; however, additional adjustments could increase or reduce the net impact of the adjustments we have identified to date, and given the low levels of net income recorded in certain previous financial periods, small amounts of adjustments may make a material difference, and, therefore, it is highly likely that the ultimate net adjustments will be material and restatements will be necessary.

Failure to Timely File 2004 Form 10-K; Delayed Form 10-Q's

Our 2004 Form 10-K was required to be filed with the SEC on March 16, 2005, and we did not meet that deadline. On March 17, 2005, we filed a Notification of Late Filing on Form 12b-25 (the "Notification of Late Filing") with the SEC relating to our inability to file the 2004 Form 10-K on a timely basis. Our Notification of Late Filing provides the reasons for our inability to file timely the 2004 Form 10-K.

We are not at this time able to provide an expected date for filing our 2004 Form 10-K. We expect that our Form 10-Q's for the quarters ending March 31, 2005, June 30, 2005 and September 30, 2005 will not be filed in a timely fashion.

Going Concern Audit Opinion

The report of our independent registered public accountants for FY04 may include an explanatory paragraph for "going concern," which is a component of our independent registered public accountants' opinion addressing whether there is substantial doubt regarding the Company's ability to continue to operate as a going concern through the period ending December 31, 2005. Receiving a "going concern" paragraph from our independent registered public accountants would occur if they conclude that the Company would require additional financing to support operations at the current level through the period ending December 31, 2005.

Status of Financial Statements

We continue to experience significant delays in completing our financial statements for the year ended December 31, 2004. We require additional time to complete our expanded financial statement close procedures in a number of areas, including revenue recognition, tax equalization and accrual of invoices. Additionally, we continue to perform significant substantive procedures to compensate for the material control weaknesses identified as part of management's assessment of our internal control over financial reporting. Completion of these substantive procedures has required significant additional time and analysis and continues to contribute to the delay in completing our financial statements for the year ended December 31, 2004.

We are completing the substantive review of the majority of our contracts. We are also still analyzing other financial records. It is difficult to predict the amount of time we will need to complete this process, and the number of additional adjustments we may find. Additionally, we are beginning the process of preparing our March 31, 2005 quarterly financial statements, and we will use this process as a subsequent procedure to identify possible further adjustments we need to make to prior periods.

We are also experiencing significant delays in completing our financial statements, in part, due to the implementation of the new financial accounting system for our North America operations. Although we believe that the new system will ultimately strengthen our overall internal control over financial reporting, we continue to experience a number of issues with respect to the accuracy and completeness of the financial information derived from the new financial accounting system, particularly as it relates to revenue recognition, the application of sales and use tax, customer billings and collections, and system reporting and reconciliation. Accordingly, we are still in the process of validating the information derived from the new financial accounting system, and this has lengthened the closing process substantially.

We are still in the process of completing management's assessment of our internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act, including identifying all material control deficiencies; see "Internal Control Over Financial Reporting" below. We continue to devote substantial resources to the evaluation of our internal control over financial reporting in order to complete management's assessment. This process has diverted substantial internal resources that are required to complete our financial statements.

Internal Control Over Financial Reporting

As we have disclosed in previous reports, including in our Form 8-K filed on December 16, 2004, the March 18 Form 8-K and the Notification of Late Filing, we have identified material weaknesses and significant deficiencies in our internal control over financial reporting. To date we have identified a number of internal control deficiencies, especially in the areas of revenue recognition, accounts receivable and unbilled revenues, expenditures and accounts payable, payroll and tax equalization, financial statement preparation and review procedures, property and equipment and entity-level procedures and controls. For further information on these material weaknesses and significant deficiencies see Exhibit 99.1 to this Form 8-K.

As a result of the identification of these material weaknesses and significant deficiencies, management's assessment will conclude that our internal control over financial reporting was ineffective as of December 31, 2004. Our independent registered public accountants may not complete their audit of our internal control over financial reporting before we file our 2004 Form 10-K, in which case we expect that they will initially disclaim an opinion, and, when the work is completed, will ultimately issue an adverse opinion, on the effectiveness of our internal control over financial reporting.

Results of Operations

A significant number of substantive procedures must be completed before we expect to finalize our financial results for FY04 and the quarter ended March 31, 2005.

As discussed throughout this Form 8-K, the Company has disclosed that the Prior Financial Statements should no longer be relied upon. As a result, the Company has decided, for purposes of this Form 8-K, to disclose certain other operating data which has not been previously disclosed. The operating data included below is generated from our management reporting systems and not from our financial reporting systems.

During the three months ended March 31, 2005, on a net basis, the Company added approximately 225 billable personnel to our global workforce. During this same period, the Company achieved a global utilization rate of approximately 70%, which reflects improved utilization of our global workforce by approximately 3% over the same period one year ago. Our global utilization rates also increased in each quarter in 2004 over the corresponding quarter in 2003. The number of hours generated by our global workforce on behalf of our clients during the quarter ended March 31, 2005 increased by approximately 14% over the same period in 2004 and 3% over the quarter ending December 31, 2004. The number of hours also increased in each quarter in FY04 over the corresponding quarter in 2003. Utilization and hours are an indication of the efficiencies of our workforce and the volume of work produced on behalf of clients. It should not be relied upon as an indication of revenue or profits.

We have determined that there has been an impairment of goodwill as of December 31, 2004 with respect to our operations in the EMEA segment, and we will record a material, non-cash charge during the fourth quarter of FY04. We currently estimate that the amount of the impairment charge will be $250 million to $400 million.

While the income statement for the three months ended March 31, 2005 has not been produced, the Company believes that it incurred a net loss for that period. Based on current projections, we also expect that we will report a net loss for the fiscal year ending December 31, 2005. In addition, we do not expect to generate cash from operations during 2005. These projections take into account the expectation that during 2005 we will: recognize expense related to the managing director restricted stock units, increase investments in product and service offerings, develop our offshore capability, increase training and other benefits to our employees, incur costs to continue remediating our North American financial accounting system and internal control over financial reporting, restructure our geographic coverage and office space and potentially reduce the number of stock options outstanding.

NYSE Late Filer Correspondence

By letter dated April 4, 2005, we were notified by the New York Stock Exchange, Inc. (the "NYSE") that, under current NYSE procedures, we have until nine months after March 16, 2005 to file our 2004 Form 10-K with the SEC before the NYSE would commence a delisting proceeding. The NYSE may, at its discretion, extend this grace period for an additional three months. Nonetheless, the NYSE reserves the right to begin delisting proceedings at any time. Until we are current with all of our periodic reporting requirements with the SEC, the NYSE will identify us as a late filer on its website and consolidated tape by affixing the letters "LF" to our common stock ticker symbol.

Changes in Senior Management

Since November 2004, the Company has made significant changes in its senior management. Effective March 21, 2005, the Company appointed Harry L. You as its Chief Executive Officer. Following the appointment of Mr. You, Roderick C. McGeary, our Chairman of the Board of Directors who had been serving as our interim Chief Executive Officer, continues to serve the Company in a key full-time capacity, focusing on clients, employees and business alliances. In addition, on February 16, 2005, Richard J. Roberts was appointed as the Company's new Chief Operating Officer, and on January 14, 2005, we appointed Joseph Corbett as Executive Vice President and Chief Financial Officer.

In conjunction with the reorganization of the Company's senior management team, nine of the other top twenty members of the Company's management have left the Company or are in the process of leaving the Company. The Company may make additional changes to its senior management team, either by adding new members or through further departures.

Principal Business Goals for 2005

The Company's principal business goals for 2005 are to resolve a number of issues relating to its financial processes, strengthen its business model, return to profitability, improve liquidity and address human resources issues.

With respect to financial reporting and process issues, the top priorities for the Company include:

- Complete the audit for FY04 and file our 2004 Form 10-K and file our Form 10-Q's for 2005
- Focus on remediation of the internal controls deficiencies we identify and then maintain effective internal controls over financial reporting going forward
- Fix the system issues relating to our new financial accounting system for North America

Our key goals for strengthening our business model in 2005 include:

- Improve cash flow by improving billings and cash collection procedures
- Reduce our use of subcontractors
- Complete the transition from the shared services agreement with KPMG LLP pertaining to infrastructure and support services which expired in February 2005, and provide or obtain the same services at reduced costs
- Reduce the use of cash or credit capacity required to support performance bonds and letters of credit in connection with our state and local practice in the U.S.
- Achieve selling, general and administrative cost savings, including reduced marketing, information technology and travel costs
- Complete the previously announced office space reduction program and continue to focus on achieving additional reductions and costs associated therewith
- Examine ways to increase real estate utilization

- Restructure the operations of a limited number of our non-strategic foreign subsidiaries where it is not expected that they will be profitable in the foreseeable future, while continuing to serve those countries through other subsidiaries
- Improve engagement pricing and billing rates per hour
- Improve project management by, among other things, enhancing our review process for contract pricing and terms
- Provide funding to create additional service offerings
- Establish the BearingPoint Institute for Executive Insight to facilitate the development of premium, higher margin services and promote our thought leadership capabilities

Key goals relating to our people include:

- Reduce excess management layers, including streamlining senior management
- Enhance retention of managing directors and recruitment of new managing directors
- Revise the compensation structure to reduce the fixed percentage of compensation and increase the variable compensation component
- Incentivize non-managing director employee stock ownership
- Create better metrics (focused on capital-cost adjusted margin dollars and growth) to evaluate employee performance, tying rewards and advancement to accountability and performance

Retention and Hiring of Managing Directors; Restricted Stock Unit Grants

As disclosed in our Form 8-K filed on April 18, 2005, during April 2005, the Company established a program to provide significant grants of Restricted Stock Units ("RSUs") to its managing directors and a limited number of other key employees. The primary purpose of the program is to align the interests of managing directors and these key employees with those of our shareholders, to enhance retention and to improve the recruiting of new managing directors from outside the Company. The program is designed to provide managing directors with a significant ownership stake in the Company. Managing directors are part of the top management group in the Company. They play a special role in driving the success of the Company and in assuring that all of its employees make the maximum contribution to its success. In addition, clients of the Company view the managing directors as being especially important to the success of their engagements, so retention of managing directors is of special significance in retaining key clients and expanding business with such clients.

The number of RSUs granted will be based on the amount of value awarded divided by the price of our common stock. RSUs will not be granted in excess of the number of shares available for issuance under our Amended and Restated 2000 Long-Term Incentive Plan (the "LTIP"). As of

March 31, 2005, there were approximately 8.7 million shares available under the LTIP. The number of shares available for issuance will increase:

- upon forfeitures of existing option grants and other securities issued under the LTIP;
- automatically based upon the formula in the LTIP, which provides that the number of shares available for issuance is equal to the greater of (i) 35,084,158 shares of common stock and (ii) one-third of the number of issued and outstanding shares of common stock; and
- upon a vote of the holders of our common stock to increase the number of shares available for issuance.

Three tranches of grants under the program with a total value of $165 million have been authorized. The first tranche under the program will be approximately 5.5 million RSU's with a grant date value of approximately $45 million, based on a share price of $8.20 per share, to over 700 managing directors. Of the remaining two tranches one grant is expected to be made in late 2005 and the other grant is expected to be made in 2006, in each case, dependent on the availability of shares for grant under the LTIP. As we are still developing the final terms and conditions of the RSU program, we have not yet determined how and when the compensation expense related to the program will be recorded.

Because our current intention is to structure the plan to vest 60% of the RSUs in late 2005 or early in 2006, we believe that we will likely record substantial non-cash expenses in 2005 related to this program.

Financial Condition and Liquidity

Our primary sources of liquidity are cash flows from operations and existing cash balances. As of December 31, 2004, we had cash balances of approximately $266.0 million, based upon the preliminary ledger records of the Company. These cash balances included the net proceeds from the sale in December 2004 of $225 million aggregate principal amount of 2.50% Series A Convertible Subordinated Debentures due 2024 and $175 million aggregate principal amount of 2.75% Series B Convertible Subordinated Debentures due 2024 (together, the "Debentures"). On January 3, 2005, the Company issued an additional $50 million of Debentures pursuant to the over-allotment option associated with the offering of the Debentures.

The Company estimates, based on its review of the Company's bank account balances, that as of March 31, 2005, the Company's cash balance was approximately $200 million. Of the estimated $200 million cash balance, the Company believes that approximately $150 million is or can be made available for use in the United States promptly. While final balance sheets for each of December 31, 2004 and March 31, 2005 are not yet available, and while the income statement for the three months ended March 31, 2005 has not been produced, the Company believes that it incurred a net loss during the quarter ended March 31, 2005. The Company believes that the principal reasons for the decline in cash since December 31, 2004 include increases in accounts receivable and unbilled revenue and significantly increased payments of liabilities as compared to payments in the prior quarter.

Our business has not generated positive cash from operations in some recent periods, which has adversely affected our liquidity. We estimate that, during the fourth quarter of 2004, our business generated positive cash from operations. But, during the first quarter of 2005, our business did not generate positive cash from operations.

We expect our cash from operations to be negative for the remainder of 2005. We estimate that we will require an additional $250 – $400 million to meet our cash needs for the remainder of 2005. We will need to meet this through a combination of capital raising, credit arrangements and cost-cutting activities.

On April 19, 2005, the Company provided notice to the lenders under the 2004 Credit Facility that it will be unable to deliver its audited financial statements on or before April 29, 2005 as required under the facility. As a result, the Company will be unable to access the 2004 Credit Facility. We plan to terminate this facility prior to April 29, 2005.

With respect to expected or possible near-term cash needs, as of April 18, 2005, there were approximately $88.1 million of letters of credit issued under our 2004 Credit Facility (which is secured by substantially all our assets). There were no borrowings outstanding under this facility. In connection with the planned termination of the 2004 Credit Facility, prior to April 29, 2005, the Company will be required to provide $88.1 million in cash to collateralize the letters of credit under the Credit Facility. In addition, some of our Public Services clients, in the state and local market and in certain foreign markets, require us to obtain surety bonds in support of client engagements. The issuers of outstanding surety bonds may, at any time, require that we post collateral as security to support these obligations.

If the Company were required to post cash collateral for the letters of credit under the Credit Facility and for the surety bonds, the total cash outlay would be approximately $128 million. The Company's intention would be to provide such collateral with cash on hand. After meeting such collateral requests, the Company estimates that it would be left with approximately $70 million of cash, of which approximately $20 million would be available for use in the United States. The Company has experienced significant variations in cash flows from month to month, and as a result, we expect to experience lower cash balances during points of time within any given quarter as compared to the end of the quarter. These intra-quarter fluctuations in cash flow have historically resulted in cash needs during a quarter of as much as $100–$150 million greater than required at quarter end.

We are currently pursuing alternative financing strategies in order to obtain funds with which to address the outstanding letters of credit issued under the 2004 credit facility and address the intra-quarter cash fluctuations referred to above. There can be no assurance that any of these strategies can be effected on satisfactory terms, if at all, prior to April 29, 2005. As indicated above, if we are unable to obtain alternative financing, we will be required to apply a significant portion of our available cash to repay our obligations under the 2004 Credit Facility. If we were required to repay the 2004 Credit Facility before securing an alternative source of financing, we would have limited remaining cash resources and our ability to operate our business would be materially impaired. In such event, we may be forced to pursue alternative strategies as we will not have sufficient liquidity to operate our business in the ordinary course and remain a going concern. These alternative strategies could include selling assets, reducing or delaying capital expenditures, seeking additional debt or equity capital or reducing or eliminating our need for letters of credit with our state and local government clients in our Public Services industry group by utilizing subcontractors or otherwise. There can be no assurance that any of these strategies could be effected on satisfactory terms, on a timely basis, or at all, which could result in our seeking protection under insolvency laws. Because we operate in a service industry, our most valuable asset is human capital. Thus, if we incur substantial employee attrition, our ability to operate our business will be materially and adversely affected.

The Company has received a non-binding Indicative Term Sheet from a financial institution to provide revolving credit loans ("RCL") of up to $100 million. The RCL would be secured by substantially all of the Company's assets and would have a maturity of five years. The lender has not completed due diligence and its internal approvals. Terms and conditions have not yet been agreed to, and any commitment to provide the RCL will be subject to conditions precedent (including the procurement of additional financing by the Company) to obtaining the loan. While the Company plans to take all necessary steps to enter into this RCL, there can be no assurances that such a loan will ultimately be made available to the Company.

Restructuring Plans and Charges; Planned Divestitures

As previously disclosed, we intend to reduce our overall office space in an effort to eliminate excess capacity in specific locations and to align our office space usage with our current workforce and the needs of our business. During 2005, we expect to incur approximately $55-$65 million in restructuring charges for lease, facilities and other exit costs (including the write-off of the net book value of leasehold improvements in these offices). Our office space reduction efforts are expected to result in a reduction of our calendar year 2005 occupancy costs of approximately $10 million net of anticipated sublease income.

During the first half of calendar year 2005, we expect to incur approximately $13 million in costs related to severance and other termination benefits in connection with certain reductions in work force.

We are in the process of evaluating whether it is preferable to restructure the operations of a limited number of our foreign subsidiaries where we do not expect that our operations will be profitable in the foreseeable future. However, we may continue to provide services in those countries through other subsidiaries. The restructuring of the operations could involve reducing the size of, or selling or liquidating, the operations. We are currently in the process of closing our practices in Peru and Thailand and are attempting to sell practices in a few other countries.

We are currently evaluating the costs associated with restructuring such operations, but it is not possible at this time to provide an estimate as to such costs.

Litigation and Related Matters

Peregrine Investigations and Litigation: We had previously received a subpoena from the U.S. Securities and Exchange Commission ("SEC") and requests for documents and information from the U.S. Attorney's Office for the Southern District of California regarding certain software resale transactions with Peregrine Systems, Inc. in the period 1999 – 2001. On November 16, 2004, Larry Rodda, a former employee, pled guilty to one count of criminal conspiracy in connection with the transactions that are the subject of the government inquiries. Mr. Rodda also was named in a civil suit brought by the SEC. We were not named in the indictment or civil suit, and are cooperating with the government investigations.

We have been named as a defendant in several civil lawsuits regarding the Peregrine software resale transactions, in which purchasers and other individuals who acquired Peregrine stock allege that we participated in or aided and abetted a fraudulent scheme by Peregrine to inflate Peregrine's stock price. Specifically, we have been named as a defendant in the following actions: *Ariko v. Moores* (Superior Court, County of San Diego), *Allocco v. Gardner* (United States District Court, Southern District of California), *Bains v. Moores* (United States District Court, Southern District of California), *Peregrine Litigation Trust v. KPMG LLP* (Superior Court, County of San Diego) and *In re Peregrine Systems Inc. Securities Litigation* (United States District Court, Southern District of California). Additionally, the reconstituted Peregrine Systems, Inc. that has emerged from bankruptcy has threatened claims against the Company in connection with the underlying contracts between the Company and Peregrine Systems, Inc. that were involved in the other matters referred to above. Our former parent, KPMG LLP, also has sought indemnity from us for certain liability it may face in the same litigations, and we have agreed to indemnify them in certain of these matters. We have answered the complaint in the *Ariko* matter and have sought dismissal of the *Allocco*, *Bains* and *Peregrine Litigation Trust* complaints for failure to state a claim. The *In re Peregrine Systems Inc. Securities Litigation* matter has been dismissed by the trial court as it relates to us. We intend to vigorously defend against the claims. However, the Company cannot predict the outcome of the various actual or threatened claims at this time.

Government Investigation: In December 2004, we were served with a subpoena by the Grand Jury for the United States District Court for the Central District of California. The subpoena seeks records relating to 12 contracts between the federal government (the "Government") and us, including two GSA schedules, as well as other documents and records. We have begun to produce documents to the Government. The Company cannot predict the outcome of this matter at this time.

SEC Informal Investigation: By letter dated April 13, 2005, the Division of Enforcement of the Securities and Exchange Commission ("SEC staff") advised the Company that it was conducting an informal investigation. The SEC staff requested that the Company produce various documents, including documents concerning internal control deficiencies and prior period adjustments identified in the Form 8-K filed by the Company on March 18, 2005. The Company is cooperating in the inquiry and will be producing documents requested by the SEC staff. The Company cannot predict the outcome of this investigation at this time.

Stock Repurchase Program

On April 11, 2005, the Board of Directors of the Company approved a stock repurchase program that permits the Company to purchase, from time to time, up to $100 million of its common stock in open market acquisitions, privately negotiated transactions and other purchases. The Company has no plans to repurchase securities until it has concluded that it has enough cash resources to satisfy its expected cash requirements for 2005, discussed above.

2005 Annual Meeting

The Company will not be holding its annual shareholders meeting on May 11, 2005, as previously stated, in light of its inability to provide financial statements to its shareholders for FY04. The Company intends to hold its annual meeting as soon as reasonably practicable after the filing of the 2004 Form 10-K.

Risk Factors

Certain of the risk factors were updated today and are included in Exhibit 99.1 to this Form 8-K and are incorporated by reference into this Form 8-K.

Additional risk factors relating to the Company are included in Exhibit 99.1 to our Form 8-K filed on December 16, 2004 and in Exhibit 99.1 to our Form 10-Q/A for the quarter ended September 30, 2004. To the extent that any risk factors in this Form 8-K address the same subject matter as any previously filed risk factor, the risk factors in this Form 8-K shall supersede such previous risk factor. In addition, the previously filed risk factors should be read in light of the fact that the Company has determined that the Prior Financial Statements should not be relied upon, as more fully described in Item 4.02 and Item 8.01 of this Form 8-K.

Item 9.01 Financial Statements and Exhibits

(c) Exhibits

Exhibit 99.1 Disclosure entitled "Risk Factors."

FORWARD-LOOKING STATEMENTS

Some of the statements in this Form 8-K (including Exhibit 99.1) constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995. These statements relate to our operations that are based on our current expectations, estimates and projections. Words such as "may," "will," "could," "would," "should," "anticipate," "predict," "potential," "continue," "expects," "intends," "plans," "projects," "believes," "estimates" and similar expressions are used to identify these forward-looking statements. The forward-looking statements contained in this Form 8-K include, without limitation, statements about our internal control over financial reporting, our results of operations, financial condition and liquidity, any necessary restatement of prior period financial statements, the amount of the impairment charge with respect to goodwill in the EMEA segment, the likelihood that our audit opinion will include a "going concern" explanatory paragraph, our ability to replace the 2004 Credit Facility and our ability to achieve our business goals for 2005. These statements are only predictions and as such are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. Forward-looking statements are based upon assumptions as to future events or our future financial performance that may not prove to be accurate. Actual outcomes and results may differ materially from what is expressed or forecast in these forward-looking statements. As a result, these statements speak only as of the date they were made, and we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Our actual results may differ from the forward-looking statements for many reasons, including:

- any direct or indirect impact of the matters disclosed in this Form 8-K on our operating results, financial condition or stock price;
- our inability to file our SEC reports on a timely basis;
- any continuation of pricing pressures and declining billing rates;
- the business decisions of our clients regarding the use of our services and the related need to use subcontractors to complete certain engagements;
- our ability to replace the 2004 Credit Facility and to access the capital markets;
- the timing of projects and their termination;
- our ability to address liquidity concerns;
- our ability to remediate internal control material weaknesses and significant deficiencies identified by us and our independent registered public accountants;

- the availability of surety bonds, letters of credit or bank guarantees supporting client engagements;
- the impact of rating agency actions;
- the ability to retain the listing of our common stock on the New York Stock Exchange;
- the availability of talented professionals to provide our services;
- the pace of technology change;
- the strength of our joint marketing relationships;
- the actions of our competitors;
- changes in spending policies or budget priorities of the U.S. government, particularly the Department of Defense, in light of the large U.S. budget deficit;
- our inability to use losses in some of our foreign subsidiaries to offset earnings in the United States;
- our inability to accurately forecast our results of operations and the growth of our business;
- changes in, or the application of changes to, accounting principles or pronouncements under accounting principles generally accepted in the United States, particularly those related to revenue recognition;
- difficulties relating to changes in our management;
- continued failure to complete Sarbanes-Oxley requirements, including the requirements of Section 404 of Sarbanes-Oxley; and
- the outcome of pending and future legal proceedings.

In addition, our results and forward-looking statements could be affected by general domestic and international economic and political conditions, uncertainty as to the future direction of the economy and vulnerability of the economy to domestic or international incidents, as well as market conditions in our industry. We caution the reader that the factors we have identified above may not be exhaustive. We operate in a continually changing business environment, and new factors that may affect our forward-looking statements emerge from time to time. Management cannot predict such new factors, nor can it assess the impact, if any, of such new factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those implied by any 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.

Date: April 20, 2005

BearingPoint, Inc.

By: /s/ Joseph Corbett

Joseph Corbett
Executive Vice President and
Chief Financial Officer

EX-99.1 2 dex991.htm DISCLOSURE ENTITLED "RISK FACTORS"

EXHIBIT 99.1

RISK FACTORS

Risks that Relate to Our Accounting and Internal Controls

We do not have audited financial statements for the year ended December 31, 2004 and do not yet know when we will be able to complete our work to allow our independent registered public accountants to complete their audit work.

Because we do not have audited financial statements for the year ended December 31, 2004, we have been unable to comply with the requirement of the Securities Exchange Act of 1934 that we file an annual report on Form 10-K within 75 days of the end of our fiscal year, and the requirements of the New York Stock Exchange. In addition, we do not have financial statements for the quarter ended March 31, 2005, and we do not yet have a schedule for when we will be able to prepare quarterly financial statements on a timely basis. At this time, we cannot predict with confidence when we will be able to complete our annual financial statements and the related audit or our quarterly financial statements.

We likely will be required to restate our financial statements for each of the fiscal quarters of FY04, the six-month transition period ended December 31, 2003 and the fiscal year ended June 30, 2003, and you should not rely on such prior financial statements.

The financial statements listed above are referred to collectively herein as the "Prior Financial Statements." We have preliminarily identified certain items that will likely require us to restate the Prior Financial Statements. As a result, we have concluded that the Prior Financial Statements, including any other financial information contained in any of our previously filed Form 8-K filings, should not be relied upon. We are not able to predict when we will be able to deliver reliable financial statements for these historic periods. We also are unable to predict when we will be able to deliver our financial statements or Form 10-K for the year ended December 31, 2004 or our required SEC filings for subsequent periods.

To date, we have identified pre-tax net adjustments decreasing net income by approximately $37 million that will likely require adjustments to prior period financial statements. Of these adjustments, approximately $15 million are items which are likely to affect each of the first three quarters of FY04 and approximately $22 million are items which are likely to affect the results of operations prior to FY04. These items include the following significant areas:

- Writedowns relating to contract revenues resulting from wrongful entries of approximately $9 million that were made by a foreign operation;
- Charges relating to employee tax equalization issues of approximately $18 million; and
- Adjustments arising from detailed engagement contract reviews and other matters totaling approximately $10 million.

The manual processes and data validation procedures we are employing to evaluate and correct our financial records have resulted in numerous adjustments to date. Some of the adjustments to date have resulted in a net increase in income and some have resulted in a decrease. This process is not yet completed. Accordingly, it is impossible to accurately predict whether, and if so, to what extent, prior periods will be restated. Based on the results of this process to date, we believe that restatements are necessary; however, additional adjustments could increase or reduce the net impact of the adjustments we have identified to date, and given the low levels of net income recorded in certain previous financial periods, small amounts of adjustments may make a material difference and, therefore, it is highly likely that the ultimate net adjustments will be material and restatements will be necessary.

As a result of our inability to timely file our 2004 Form 10-K with the SEC, among other things:

- our stock may be delisted from the NYSE;
- we are not eligible to use a registration statement to sell our securities and will not be eligible to use one until we are current in our required SEC filings, and we will not be eligible to use a short-form Form S-3 registration statement until we have timely filed our SEC reports for a period of twelve months, which may increase the time and resources we would need to expend if we chose to access the public capital markets; and
- until we file our Form 10-K and, if due, our 2005 Form 10-Q's, there will not be adequate current public information available to permit resales of restricted securities pursuant to Rule 144 of the Securities Act of 1933, as amended.

Because we do not have reliable financial statements for historic periods and do not know when we will have reliable financial statements, an investment in any of our securities involves a very high degree of risk.

We have identified material weaknesses in our internal control over financial reporting.

As we have disclosed in previous reports, including in our Form 10-K/A for the fiscal year ended June 30, 2003, our Form 8-K filed on December 16, 2004, our Form 8-K filed on March 18, 2005, and our Notification of Late Filing filed on March 17, 2005, we have identified deficiencies and material weaknesses in our internal control over financial reporting.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal controls are designed to provide reasonable assurance to our management and members of our Board of Directors regarding the preparation and fair presentation of published financial statements in accordance with generally accepted accounting principles. Management is still in the process of completing its assessment of our internal control over financial reporting as required by Section 404 of the Sarbanes-Oxley Act. In making this assessment, management has used the criteria set forth in the *Internal Control — Integrated Framework* by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

Management is in the process of evaluating the identified control deficiencies to determine whether the deficiencies, individually or in combination, are significant deficiencies or material weaknesses. A *significant deficiency* is a control deficiency, or combination of control deficiencies, that adversely affects the company's ability to initiate, authorize, record, process, or report external financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the Company's annual or interim financial statements that is more than inconsequential will not be prevented or detected. A *material weakness* is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

To date, we have identified a number of control deficiencies, especially in the areas of revenue recognition, accounts receivable and unbilled revenue, expenditures and accounts payable, payroll and tax equalization, financial statement preparation and review procedures, property and equipment, and entity-level procedures and controls.

We expect that the following will be classified as material weaknesses and others may be classified as significant deficiencies that in the aggregate may constitute material weaknesses. The nature of each of these material weaknesses in our internal control over financial reporting is described below.

1 - Inadequate control over Revenue Recognition

These control deficiencies include the following:

a) lack of adequate resources to review and determine the appropriate revenue recognition;

b) insufficient review of individual contract cost estimates;

c) implementation of a new financial accounting system in North America without sufficient, organizational re-alignment, user involvement (including logic testing), training, and adequate management reporting; and

d) insufficient controls to ensure that all engagement costs, principally those related to subcontractor expenses, have been properly captured in the estimate-to-complete process.

As part of our year-end closing procedures, we are in the process of performing detailed reviews of our engagement accounting. To date we have identified a significant number of adjustments impacting revenue and expense, including write-downs that were made by a foreign operation relating to contract revenues resulting from wrongful prior period entries of approximately $9 million.

2 - Inadequate controls over Accounts Receivables and Unbilled Revenue

The following control deficiencies relate primarily to our North American operations:

a) inability to identify and record manual invoices resulting in cash receipts not being applied in a timely manner, and incomplete or inaccurate accounts receivable, unbilled revenue, and bad debt reserves.

b) untimely design and implementation of detailed management reports.

As a part of our year-end closing procedures we are in the process of accumulating and accounting for all manual invoices.

3 - Inadequate controls over Expenditures and Accounts Payable

The following control deficiencies relate primarily to our North American operations:

a) inability to ensure that all vendor invoices are recorded in the appropriate period; and

b) inadequate level of invoice review and approval, principally relating to general purchases.

We are performing a substantial search for unrecorded liabilities through examination of disbursements and vouchers made after year-end to ensure vendor invoices are recorded in the appropriate periods.

4 - Inadequate controls over Payroll and Tax Equalization

These control deficiencies include:

Inadequate global work location reporting procedures and controls to accurately and completely identify payroll and income tax liabilities. Tax equalization relates to potential payroll and income tax liabilities relating to employees impacted by domestic tax regulations pertaining to consultants working across state borders within the United States for an extended period of time, as well as foreign tax regulations relating to our consultants working outside of their resident country for an extended period of time.

We are performing significant substantive procedures as of year-end 2004 to ensure all related liabilities have been identified and recorded in the proper periods. As part of our year-end closing procedures, to date we have identified charges relating to employee tax equalization issues totaling approximately $18 million.

5 - Inadequate controls over Financial Statement Preparation and Review

These control deficiencies, primarily related to our North American operations, include:

a) inadequate overall review and analysis of financial account balances;

b) inability to generate adequate reports from our new financial accounting system; and

c) insufficient technical accounting resources.

Subsequent to filing the Form 10-Q for the period ended September 30, 2004, the Company discovered an error was made with respect to accounts receivable being overstated by $92.9 million and unbilled revenue being understated by $92.9 million due to a misapplied journal entry. Due to these control deficiencies we are allowing sufficient time to perform substantive review over our consolidated financial results.

6 - Inadequate controls over Property and Equipment

These control deficiencies include the following:

a) inadequate procedures to review the classification, existence, and useful life of fixed assets after initial acquisition; and

b) inadequate review of lease agreements to ensure proper accounting treatment.

Additional substantive procedures are currently in process as part of our year-ended closing to ensure proper accounting of our leases and fixed assets.

7 - ***Inadequate Entity-level controls, in accordance with the COSO framework***

These control deficiencies relate to the control environment and monitoring of controls and include the following:

a) lack of segregation of duties resulting in significant non-compliance with company policies and procedures;

b) lack of consistent communication regarding the importance of adherence to company policies and procedures;

c) lack of adequate personnel;

d) inadequate company-wide training on financial accounting systems and procedures;

e) lack of adequate mechanisms for anticipating and identifying financial reporting and fraud risks;

f) lack of effective information systems and business processes required to support operations and reporting requirements; and

g) lack of effective management oversight in certain of our Asia-Pacific operations.

To address the above noted internal control weaknesses, we are in the process of executing substantive procedures for our year-end closing process to ensure our financial statements are fairly stated in all material respects. We are working to identify and implement changes that are desired to strengthen and materially affect our internal controls over financial reporting. This process is not yet completed.

The material weaknesses contributed to our senior management's conclusion that the company's Prior Financial Statements should not be relied upon because of errors in those financial statements. Additionally, if these material weaknesses are not corrected, they could result in material misstatements of future annual or interim financial statements that might not be prevented or detected.

It also is possible that additional material weaknesses will be identified as we and our independent registered public accountants complete our respective assessment processes. We are now evaluating what changes in internal control over financial reporting should be implemented in order to fully address these material weaknesses and other control deficiencies. We expect to include in the 2004 Form 10-K a discussion of our plans to remediate the material weaknesses and other deficiencies in internal control over financial reporting that our management identifies.

As a result of these material weaknesses, management's assessment will conclude that our internal control over financial reporting and disclosure controls are ineffective. We expect that our independent registered public accountants will initially disclaim an opinion, and, when the work is completed, will ultimately issue an adverse opinion on the effectiveness of our internal control over financial reporting.

Because we have concluded that our internal control over financial reporting is not effective and our independent registered public accountants will disclaim an opinion, or will issue an adverse opinion, on the effectiveness of our internal controls, our ability to obtain additional financing, or obtain additional financing on favorable terms, could be materially and adversely affected, which, in turn, could materially and adversely affect our business, our financial condition and the market value of our securities. In addition, perception of us could also be adversely affected among rating agencies, customers, lenders, investors, securities analysts and others. Moreover, we have experienced difficulty in producing accurate and timely forecasted financial information due, in part, to issues related to the accuracy and completeness of the financial information derived from the new financial accounting system and the material control weaknesses and other deficiencies identified as part of management's assessment of internal control over financial reporting. Our inability to accurately and timely forecast financial information may limit our ability to predict and assess the ongoing financial needs of our business.

In addition, as discussed in "Recent Developments-SEC Informal Investigation", by letter dated April 13, 2005, the Division of Enforcement of the Securities and Exchange Commission ("SEC staff") advised the Company that it was conducting an informal investigation and requested that the Company produce various documents, including documents concerning internal control deficiencies and prior period adjustments identified in the Form 8-K filed by the Company on March 18, 2005. The Company cannot predict the outcome of this investigation at this time.

We have postponed the filing of our 2004 Form 10-K, and expect to delay the filing of our Form 10-Q for each of the fiscal quarters ended March 31, 2005, June 30, 2005, and September 30, 2005. Consequently, material information concerning our 2004 operating results and financial condition is not available and is not expected to be available at any certain time.

Investors must evaluate whether to purchase or sell our securities in light of the lack of current financial information concerning us and in light of the above discussion. Future filed information may not be in the form required by applicable securities laws and on a comparable basis. We are not in a position to predict at what date current financial information will be available or at what date current financial information will be filed in a form consistent with the applicable securities laws. Accordingly, any investment in our securities involves a very high degree of risk.

As a result of our failure to timely file our 2004 Form 10-K, our common stock may be delisted by the New York Stock Exchange, Inc. ("NYSE").

We did not timely file our 2004 Form 10-K, and we are not able to predict when we will be able to file our 2004 Form 10-K or Form 10-Q for the quarter ending March 31, 2005, or when we will be able to file future reports with the SEC on a timely basis.

By letter dated April 4, 2005, we were notified by the NYSE that under current NYSE procedures, we have until nine months after March 16, 2005 to file our 2004 Form 10-K with the SEC before the NYSE would consider commencing delisting actions. The NYSE may, at its discretion, extend this grace period for an additional three months. Nonetheless, the NYSE reserves the right to begin delisting proceedings now or at any time. Until we are current with all of our periodic reporting requirements with the SEC, the NYSE will identify us as a late filer on its website and consolidated tape by affixing the letters "LF" to our common stock ticker symbol.

In addition, we will not comply with the NYSE listing standard that requires us to send our annual report to our stockholders not later than April 30, 2005, the date 120 days after the close of our fiscal year.

There can be no assurances that we will file our reports within the allotted grace period or be able to timely deliver our annual report to our stockholders or that the NYSE will not commence delisting proceedings against us at any time. The delisting of our common stock from the NYSE may have a material adverse effect on us by, among other things, reducing:

- the liquidity of our common stock;
- the market price of our common stock;
- the number of institutional and other investors that will consider investing in our common stock;
- the number of market makers in our common stock;
- the availability of information concerning the trading prices and volume of our common stock;
- the number of broker-dealers willing to execute trades in shares of our common stock; and
- our ability to obtain equity financing for the continuation of our operations.

Additionally, a delisting of our common stock from the NYSE:

- would result in the occurrence of a "designated event" under the Debentures, permitting holders of the Debentures to require us to repurchase their Debentures for 100% of the principal amount of the Debentures plus accrued and unpaid interest and liquidated damages, if any; and
- the triggering of a put right by the holders of our Debentures would also result in a default under the 2004 Credit Facility.

The occurrence of these events would have a material adverse impact on our business and our liquidity.

We may lose existing customers or may not be successful in gaining new customers as a result of the issues relating to our financial statements, internal controls and other matters.

As a result of the issues we have identified related to our internal controls and failure to file our 2004 Form 10-K, existing or potential customers may hesitate to retain us. To date, these events have not had a material negative impact on our ability to attract new customers. There can be no assurances, however, that such issues will not have a material adverse effect on our ability to obtain customer engagements in the future.

Risks that Relate to Our Financial Results

We have experienced net losses, negative cash flows, declines in net income, declines in billing rates, and increases in days sales outstanding recently and expect to incur net losses and negative cash flows for the remainder of 2005.

During the six months ended December 31, 2003, we had reported a significant net loss. During the three months ended March 31, 2004, we experienced a decrease in net income when compared to the three months ended March 31, 2003, and during each of the three months ended March 31, 2004 and September 30, 2004, we experienced negative cash flows from operations. For the three months ended September 30, 2004, our consolidated billing rates declined when compared to the three months ended September 30, 2003. The estimated decline in rates is attributable to market rate pressure, contract write-offs attributable to the third and fourth quarters and expansion of our lower rate workforce in the U.S., China and India. Our days sales outstanding increased considerably from September 30, 2003 to September 30, 2004. As discussed above, you should not rely on our previously reported financial results or, as a result, data derived from such results. Nevertheless, we believe the trend of incurring net losses continued in the fourth quarter of 2004 and possibly the first quarter of 2005.

Based on current projections we expect that we will report a net loss for the fiscal year ended December 31, 2005. In addition, we expect to operate with negative cash flow from operations during 2005.

Our operating results will suffer if we are not able to maintain our prices and utilization rates.

Our operating results are largely a function of the rates we are able to charge for our services and the utilization rate, or chargeability, of our professionals. Accordingly, if we are not able to maintain the rates we charge for our services or an appropriate utilization rate for our professionals, or manage our cost structure, our operating results will be negatively impacted, we will not be able to sustain our profit margin and our profitability will suffer. The rates we are able to charge for our services are affected by a number of factors, including:

- our clients' perception of our ability to add value through our services;
- introduction of new services or products by us or our competitors;
- pricing policies of our competitors; and
- general economic conditions in the United States and abroad.

Our utilization rates are also affected by a number of factors, including:

- seasonal trends, primarily as a result of our hiring cycle and holiday and summer vacations;
- our ability to transition employees from completed projects to new engagements;
- our ability to forecast demand for our services and thereby maintain an appropriately balanced and sized workforce;
- our ability to manage attrition; and
- our ability to reduce our workforce quickly or economically, especially outside the United States.

Our operating results are also a function of our ability to control our costs and improve our efficiency. We may from time to time increase the number of our professionals as we execute our strategy for growth, and we may not be able to manage a significantly larger and more diverse workforce, control our costs or improve our efficiency.

During the three months ended March 31, 2005, on a net basis, the Company added approximately 225 billable personnel to our global workforce. During this same period, the Company achieved a global utilization rate of approximately 70%, which reflects improved utilization of our global workforce by approximately 3% over the same period one year ago. Our global utilization rates also increased in each quarter in 2004 over the corresponding quarter in 2003. The number of hours generated by our global workforce on behalf of our clients during the quarter ended March 31, 2005 increased by approximately 14% over the same period in 2004 and 3% over the quarter ending December 31, 2004. The number of hours also increased in each quarter in FY04 over the corresponding quarter in 2003. Utilization and hours are an indication of the efficiencies of our workforce and the volume of work produced on behalf of clients. It should not be relied upon as an indication of revenue or profits.

Risks that Relate to Our Liquidity

Our current cash resources are not sufficient to meet our expected near-term cash needs, especially to fund intra-quarter cash requirements that historically reached $100 million to $150 million. We estimate we will require an additional $250 million to $400 million. In order to provide for these cash needs, we must, among other things, obtain additional financings. In addition, we expect to terminate all outstanding obligations under our 2004 Credit Facility prior to April 29, 2005 in order to avoid a default under this facility on that date. If we cannot obtain alternative financing, we would need to replace those obligations with existing cash on hand, which would further decrease our liquidity and could materially impair our ability to operate our business.

Our primary sources of liquidity are cash flows from operations and existing cash balances. The Company estimates, based on its review of the Company's bank account balances, that as of March 31, 2005, the Company's cash balance was approximately $200 million. Of the estimated $200 million cash balance, the Company believes that approximately $150 million is or can be made available for use in the United States promptly. While final balance sheets for each of December 31, 2004 and March 31, 2005 are not yet available, and while the income statement for the three months ended March 31, 2005 has not been produced, the Company believes that it incurred a net loss during the quarter ended March 31, 2005.

Our business has not generated positive cash from operations in some recent periods, which has adversely affected our liquidity. With respect to expected or possible near-term cash needs, as of April 18, 2005, there were approximately $88.1 million of letters of credit issued under our 2004 Credit Facility (which is secured by substantially all our assets). There were no borrowings outstanding under this facility. In connection with the termination of the 2004 Credit Facility prior to April 29, 2005, the Company will be required to provide $88.1 million in cash to collateralize the letters of credit under the Credit Facility. In addition, some of our Public Services clients, in the state and local market and in certain foreign markets, require us to obtain surety bonds in support of client engagements. The issuers of outstanding surety bonds may, at any time, require that we post collateral as security to support these obligations.

If the Company were required to post cash collateral for the letters of credit under the Credit Facility and for the surety bonds, the total cash outlay would be approximately $128 million. The Company's intention would be to provide such collateral with cash on hand. After meeting such collateral requests, the Company estimates that it would be left with approximately $70 million of cash, of which approximately $20 million would be available for use in the United States. The Company has experienced significant variations in cash flows from month to month, and as a result, we expect to experience higher negative cash flow during points of time within any given quarter as compared to the end of the quarters. These intra-quarter fluctuations in cash flow have historically resulted in cash needs during a quarter of as much as $100 million to $150 million.

We are currently pursuing alternative financing strategies in order to obtain funds with which to terminate the 2004 Credit Facility, repay the outstanding letters of credit thereunder and provide for the intra-quarter cash needs referred to above. There can be no assurance that any of these strategies could be effected on satisfactory terms, if at all, prior to April 29, 2005 or thereafter.

As indicated above, if we are unable to obtain alternative financing, we will be required to apply a significant portion of our available cash to repay our obligations under the 2004 Credit Facility. If we were required to repay the 2004 Credit Facility before securing an alternative source of financing, we would have limited remaining cash resources and our ability to operate our business and meet our intra-quarter cash needs would be materially impaired.

In such event, if we are unable to obtain an alternative source of financing, we may be forced to pursue alternative strategies as we will not have sufficient liquidity to operate our business in the ordinary course and remain a going concern. These alternative strategies could include selling assets, reducing or delaying capital expenditures, seeking additional debt or equity capital, reducing or eliminating our need for letters of credit with our state and local government clients in our Public Services industry group by utilizing subcontractors or otherwise. There can be no assurance that any of these strategies could be effected on satisfactory terms, on a timely basis, or at all, which could result in our seeking protection under insolvency laws. Because we operate in a service industry, our most valuable asset is human capital. Thus, if we incur substantial employee attrition, our ability to operate our business will be materially and adversely affected.

The report of our independent registered public accountants for FY04 may include a "going concern" explanatory paragraph.

The report of our independent registered public accountants for FY04 may include an explanatory paragraph for a "going concern," which is a component of our independent registered public accountants' opinion addressing whether there is substantial doubt regarding the Company's ability to continue to operate as a going concern through the period ended December 31, 2005. Receiving a "going concern" explanatory paragraph from our independent registered public accountants would occur if they conclude that the Company would require additional financing to support operations at the current level through the period ending December 31, 2005.

If the report of our independent registered public accountants for FY04 includes a "going concern" explanatory paragraph, our stock price and our ability to obtain additional financing and retain our managing directors may be materially adversely affected. In addition, perception of us could be adversely affected among rating agencies, customers, lenders, investors, securities analysts and others.

The recent downgrade of our credit ratings will increase our borrowing costs, which could materially and adversely affect our financial condition.

On March 21, 2005, Moody's downgraded our issuer rating to Ba3 from Ba2 with a stable outlook. Separately, on March 18, 2005, Standard & Poor's Ratings Services ("Standard & Poor's") downgraded our corporate credit and senior unsecured ratings to BB from BB+ with negative implications. These downgrades by Moody's and Standard & Poor's followed downgrades we received from each of the rating agencies on December 15, 2004.

The fees and interest rates we must pay under the 2004 Credit Facility are based upon our Moody's and Standard & Poor's debt ratings. Thus, as a result of the recent downgrades our interest expense will further increase. In addition, the ratings downgrades will likely increase the interest rate we must pay if we issue new debt, which could materially and adversely affect our results of operations. Furthermore, increased interest rates could make it prohibitively expensive for us to borrow additional funds. Our inability to obtain additional financing, or obtain additional financing on terms favorable to us, could hinder our ability to fund general corporate requirements; limit our ability to compete for new business; and increase our vulnerability to adverse economic and industry conditions.

Any future ratings downgrades could further materially and adversely impact our borrowing costs and our ability to obtain financing.

We may be required to post collateral to support obligations under our outstanding surety bonds, and we may be unable to obtain new surety bonds, letters of credit or bank guarantees in support of client engagements on acceptable terms, which could materially and adversely affect our ability to obtain additional client engagements that require them.

Some of our Public Services clients, largely in the state and local market, require us to obtain surety bonds, letters of credit or bank guarantees in support of client engagements. The issuers of our outstanding surety bonds may, at any time, require that we post collateral as security to support these obligations. As a result of the credit rating downgrades of the Company in December 2004, certain issuers of our surety bonds required us to post collateral. These requirements are likely to increase as a result of the further downgrades of our credit rating in March 2005. In order to meet our obligations to post collateral and support other obligations, we have used approximately $88 million of letters of credit under the 2004 Credit Facility. We may be subject to greater cash or letter of credit collateral demands from our surety bond issuers which, in turn, could materially and adversely affect our liquidity. If we do not find alternative sources of liquidity, we may be unable to satisfy these requirements, and we may be unable in certain situations to bid for new business. If we were required to post cash collateral for the letters of credit under the 2005 Credit Facility and for the surety bonds, the total cash outlay would be approximately $128 million.

In addition, we cannot be certain that surety bonds, letters of credit or bank guarantees will be further available to us on acceptable terms, if at all, particularly in light of our credit rating downgrades. If we cannot obtain surety bonds, letters of credit or bank guarantees on acceptable terms, we may be unable to maintain existing client engagements or to obtain additional client engagements that require them. In turn, our current and planned revenues from our Public Services business could be materially and adversely affected, and our ability to grow our Public Services business will be hindered, all of which could materially and adversely affect our financial condition and results of operations.

Risks that Relate to the Change in Our Management, Retention and Ability to Hire

The recent changes in our senior management may be disruptive to our business and could materially and adversely affect our operating results and financial condition.

Since November 2004, we have made significant changes in our senior management. Effective March 21, 2005, we appointed Harry L. You as our Chief Executive Officer. Following the appointment of Mr. You, Roderick C. McGeary, our Chairman of the Board of Directors who had been serving as our interim Chief Executive Officer, continues to serve the Company in a key full-time capacity, focusing on clients, employees and business partners. On February 16, 2005, Richard J. Roberts was appointed as our new Chief Operating Officer and on January 14, 2005, we appointed Joseph Corbett as Executive Vice President and Chief Financial Officer.

In conjunction with the reorganization of the Company's senior management, nine of the other top twenty members of the Company's management have left, or are in the process of leaving the Company. The Company may make additional changes to its senior management team, either by adding new members or through further departures.

If we are unable to integrate the new members of our new senior management team into our business, such failure would be disruptive to our business and could materially and adversely affect our operating results and financial condition.

Our ability to retain our managing directors is critical to the success of our business.

The retention of our managing directors is particularly important to our future success. For fiscal years 2002 and 2003, for the six months ended December 31, 2003, for fiscal year 2004 and for the three months ended March 31, 2005, our cumulative global annual rate of turnover among our client service managing directors was 4.2%, 4.1%, 6.3%, 8.4% and 16.6%, respectively, excluding any involuntary terminations and terminations as a result of reductions in our workforce.

Our success is largely dependent on our ability to hire and retain talented people in an industry that periodically experiences a shortage of skilled professionals and a high rate of employee turnover.

Our business involves the delivery of professional services and is highly labor-intensive. Our success depends largely on our general ability to attract, develop, motivate and retain highly skilled professionals. The loss of some or a significant number of our professionals or the inability to attract, hire, develop, train and retain additional skilled personnel could have a serious negative effect on us, including our ability to obtain and successfully complete important engagements and thus maintain or increase our revenue. For fiscal years 2002 and 2003, for the six months ended December 31, 2003, for fiscal year 2004 and for the three months ended March 31, 2005, the cumulative annual rate of turnover among our billable workforce was 14.6%, 14.2%, 19.2%, 22.4% and 25.9%, respectively, excluding any involuntary terminations and terminations as a result of reductions in our workforce. In a strong economy, qualified consultants often are in great demand and our turnover rate tends to be higher. In addition, the alliance agreements we enter into from time to time may prohibit us from soliciting their employees or their affiliates' employees. These circumstances have required us in a strong economy to increase the compensation we pay our professionals at a rate higher than the general inflation rate. Even so, we cannot assure you that we will be successful in attracting and retaining the skilled professionals we require to conduct and expand our operations successfully when there is an economic recovery.

Our RSU grants may have a negative impact on our operating results in future periods

We are evaluating the compensation expense that we will record in respect of our RSU program. We may be required to apply variable accounting treatment to the RSUs. If we are required to apply variable accounting treatment to the RSUs, we would be required to remeasure compensation costs for the RSUs in each future financial reporting period based on changes in the market value of the underlying common stock. Depending on movements in the market value of our common stock, the variable accounting treatment of the RSUs may result in material non-cash compensation costs in future periods. Because our current intention is to vest 60% of the RSUs in late 2005 or early in 2006, we believe that we will likely record substantial compensation expenses in 2005 related to this program.

The RSU program may substantially dilute existing and future holders of our common stock.

We plan to issue approximately 5.5 million shares of common stock in connection with the first grant of RSUs under the RSU program. The number of shares of our common stock issuable in connection with future grants under the RSU program is not known today because the number of shares to be issued in connection with future grants will depend on the value of our stock on the date of grant, as the future grants are based on a fixed dollar value of the total grant. However, the maximum number of shares we will be required to issue will be capped at the number of shares of common stock available under our LTIP, which was approximately 8.7 million. The number of shares available for issuance under the our LTIP will increase:

- upon forfeitures of options and other securities issued under the LTIP;
- automatically based upon the formula in the LTIP, which provides that the number of shares available for issuance is equal to the greater of (i) 35,084,158 shares of common stock and (ii) one-third of the number of issued and outstanding shares of common stock; and
- upon a vote of the holders of our common stock to increase the number of shares available for issuance.

Existing and future stockholders face substantial dilution if we are required to issue the maximum number of shares available for issuance under the Plan.

Risks that Relate to Our Government Contracts

Unfavorable government actions could force us to adjust previously reported operating results and could subject us to civil or criminal of penalties and administrative sanctions.

The federal government audits and reviews our performance on contracts, pricing practices, cost structure, systems, and compliance with applicable laws, regulations and standards. Like most large government contractors, our contracts and systems are audited and reviewed on a continual basis by federal agencies, including the Defense Contract Audit Agency and certain states. An audit of our work, including an audit of work performed by companies we have acquired or may acquire, or subcontractors we have hired or may hire, could result in a substantial adjustment to our previously reported operating results or may impact our ability to obtain new work. For example, as discussed previously, any costs which were originally reimbursed could subsequently be disallowed. In this case, cash we have already collected may have to be refunded, and operating margins may be reduced.

In addition, due to our federal and other governmental contracts, we are, from time to time, subject to a variety of other reviews, inquiries, civil investigations and criminal investigations (federal or otherwise). These matters arise out of or relate to our contracts, but do not necessarily mean in each instance that we are the target of the review, inquiry, or investigation.

For example, we are cooperating in an ongoing investigation of the Core Financial Logistics System ("CoreFLS") project by the Inspector General's Office ("VA IG") of the Department of Veterans' Affairs and the U.S. Attorney for the Central District of Florida ("AUSA"). We do not believe that we are a subject or target of either investigation. To date, we have been issued two subpoenas in this matter seeking the production of documents relating to the CoreFLS project. We have fully cooperated with the investigation and have produced documents in response to both subpoenas. We have been advised that the focus of the investigation is not on the Company alone, but instead on the CoreFLS project as a whole. There have been no specific allegations of criminal or fraudulent conduct against the Company. There also have been no contractual claims filed against us by the VA IG in connection with the CoreFLS project.

As another example, and as discussed previously, we began to provide documents in connection with a subpoena by the Grand Jury for the United States District Court for the Central District of California relating to 12 federal government contracts. The subpoena seeks records relating to 12 contracts between the federal government (the "Government") and us, including two GSA schedules, as well as other documents and records. We have begun to produce documents to the Government in this investigation. It is impossible to predict the outcome of either of these investigations at this time.

If a government audit review, inquiry or investigation uncovers improper or illegal activities, we may be subject to civil and criminal penalties and administrative sanctions, including termination of contracts, reimbursement of payments received, payment of certain government costs, forfeiture of profits, suspension of payments, fines, and suspension or debarment from doing business with federal government agencies. These consequences could lead to a material reduction in our revenue. In addition, we could suffer serious harm to our reputation if allegations of impropriety were made against us, whether or not true. Although audits have been completed on our incurred contract costs through fiscal year 1999, audits for costs incurred or work performed after fiscal year 1999 have not yet been completed. In addition, non-audit reviews by the government may still be conducted by the government.

If we were suspended or debarred from contracting with the federal government generally or any specific agency, if our reputation or relationship with government agencies were impaired, or if the government otherwise ceased doing business with us or significantly decreased the amount of business it does with us, our revenue and operating results could be materially and adversely harmed.

Unfavorable government audit results could force us to adjust previously reported operating results and could subject us to a variety of penalties and sanctions.

The federal government audits and reviews our performance on contracts, pricing practices, cost structure, systems, and compliance with applicable laws, regulations and standards. Like most large government contractors, our contracts and systems are subject to audits and reviews by federal agencies, including the Defense Contract Audit Agency. An audit of our work, including an audit of work performed by companies we have acquired or may acquire, or subcontractors we have hired or may hire, could result in a substantial adjustment to our previously reported operating results. For example, any costs which were originally reimbursed could subsequently be disallowed. In this case, cash we have already collected may have to be refunded, and operating margins may be reduced.

If a government audit, review or investigation uncovers improper or illegal activities, we may be subject to civil and criminal penalties and administrative sanctions, including termination of contracts, reimbursement of payments received, payment of certain government costs, forfeiture of profits, suspension of payments, fines and suspension or debarment from doing business with federal government agencies. These consequences could lead to a material reduction in our revenue. In addition, we could suffer serious harm to our reputation if allegations of impropriety were made against us, whether or not true. Although audits have been completed on our incurred contract costs through fiscal year 1999, audits for costs incurred or work performed after fiscal year 1999 have not yet been completed. In addition, audits and reviews by the government may still be conducted on any or all our government contracts.

If we were suspended or debarred from contracting with the federal government generally or any specific agency, if our reputation or relationship with government agencies were impaired, or if the government otherwise ceased doing business with us or significantly decreased the amount of business it does with us, our revenue and operating results could be materially harmed. Moreover, following a recent, periodic audit by the DCAA of the Company's control environment and overall accounting controls, the DCAA requested information pertaining to our publicly disclosed potential material weaknesses, which may reflect a heightened sensitivity to these issues by government auditors.

Attachment 2

"PROFESSIONALS PUTTING GOOD IDEAS TO WORK"

April 29, 2005

CONCEPTS TO OPERATIONS

Charles M. Austin, President
Preferred Communication Systems, Inc.
400 E. Royal Lane
N24
Irving, TX 75039

Dear Mr. Austin:

As you are aware, Concepts To Operations, Inc. (CTO) is a telecommunication, and information systems engineering and consulting firm that has been in business since 1990. Our engineers have had experience ranging from 11 to 54 years. Our expertise includes both Federal Government and non-Federal radio spectrum management and radio engineering, particularly land mobile radio, both commercial and public safety.

We have been members of Federal Communications Commission (FCC) Advisory Committees. We have participated in and are on record in many FCC filings and proceedings and have been active in APCO and NENA activities. Our staff members have presented papers and published articles concerned with various aspects of telecommunications engineering that date back over five (5) decades.

We have followed the FCC rule making concerning reconfiguration of the 800 MHz band since its inception and have provided detailed inputs and data to be used in various filings in this proceeding. In particular, for example, we have provided cost information concerning rebanding which was significantly higher than those costs initially proposed in the Consensus Plan. The total rebanding costs finally incorporated in the initial December 2004 Report and Order are close to those that we determined.

We have tried to utilize the Transition Administrator (TA) "Tools" and have found major discrepancies between the data incorporated therein and the data on the FCC Universal Frequency Licensing System (ULS). For example, we have noted that the minutes and seconds of the longitude of the sites supplied by the TA are the same as the latitude but were different than the miles. Obviously, for determining interference to be expected when changes in frequencies are proposed, the result will be far different than will actually occur (see ATTACHMENT 1 and 2 for example). We also noticed that expired licenses are shown in the data supplied by the "TA Tools" and apparently are candidates for rebanding even though they are no longer in legal operation (see ATTACHMENT 3 and 4 for example). Based on only those two types of discrepancies, it is obvious that there is a lack of quality control of the TA supplied data and "TA Tools". Perhaps these are the only types of errors in the "TA Tools", however, we have lost confidence in the information and temporarily stopped relying on the "TA Tools" until more reliability can be assured.

Sincerely,

Alejandro A. Calderón,
President & CEO

AAC/arc

cc: Paul C. Besozzi, Patton Boggs LLP

CORPORATE OFFICES: 801 Compass Way, Suite 217, Annapolis, MD 21401-7813 • e-mail: cto@concepts2ops.com, (410) 224-8911, Fax (410) 224-8591

ATTACHMENT 1

Federal Communications Commission
Wireless Telecommunications Bureau

Radio Station Authorization (Reference Copy)

This is not an official FCC license. It is a record of public information contained in the FCC's licensing database on the date that this reference copy was generated. In cases where FCC rules require the presentation, posting, or display of an FCC license, this document may not be used in place of an official FCC license.

Licensee: KELLY COMMUNICATIONS INC

FCC Registration Number (FRN):	
Call Sign: KNRT449	**File Number:**
Radio Service: YX - SMR, 806-821/851-866 MHz, Trunked	
Regulatory Status: CMRS	
Frequency Coordination Number:	

ATTN DAVE KELLY
KELLY COMMUNICATIONS INC
704 HANNA WOODS
CRAMERTON, NC 28302

Grant Date	Effective Date	Expiration Date	Print Date
10/31/1995	10/31/1995	10/31/2000	04/29/2005

STATION TECHNICAL SPECIFICATIONS

Fixed Location Address or Mobile Area of Operation

Loc. 1 **Address:** 340 PRINCE ST

City: BECKLEY **County:** RALEIGH **State:** WV

Lat (NAD83): 37-46-45.4 N **Long (NAD83):** 081-11-14.4 W **ASR No.:** **Ground Elev:** 767.0

Loc. 2 **Area of Operation**

Operating within a 113.0 km radius around fixed location 1

Antennas

Loc. No.	Ant. No.	Frequencies (MHz)	Sta. Cls.	No. Units	No. Pagers	Emmission Designator	Output Power (watts)	ERP (watts)	Ant. Ht./Tp meters	Ant. AAT meters	Construct Deadline Date
1	1	858.16250	FB2C	1	0	20K0F3E 16K0F1D	150.000	1000.000	58.0	135.0	
1	1	859.16250	FB2C	1	0	20K0F3E 16K0F1D	150.000	1000.000	58.0	135.0	
1	1	860.16250	FB2C	1	0	20K0F3E 16K0F1D	150.000	1000.000	58.0	135.0	
1	1	860.63750	FB2C	1	0	20K0F3E 16K0F1D	150.000	1000.000	58.0	135.0	
1	1	861.08750	FB2C	1	0	20K0F3E 16K0F1D	150.000	1000.000	58.0	135.0	

2	1	806.00000- 821.00000	MO	4	0	20K0F3E 16K0F1D	100.000	100.000

Control Points **Pt. No.**1

Address: 704 HANNA WOODS

City: CRAMERTON **County:** **State:** NC **Telephone Number:** (704)824-5566

Associated Call Signs
None

Waivers/Conditions
None

Conditions
Pursuant to Section 309(h) of the Communications Act of 1934, as amended, 47 U.S.C. Section 309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. Section 310(d). This license is subject in terms to the right of use or control conferred by Section 706 of the Communications Act of 1934, as amended. See 47 U.S.C. Section 706.

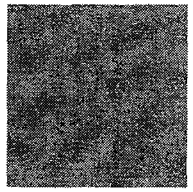
ATTACHMENT 2	*Call Sign Checker*
TA Home Page	Enter your call sign knrt449 Submit

KNRT449

Service Code: YX : SMR, 806-821/851-866 MHz, Trunked

KELLY COMMUNICATIONS INC

704 HANNA WOODS
CRAMERTON NC 28302



Prioritization Waves - click on map for larger image

Prioritization Schedule - click on chart for larger image

These search tools are intended to assist site-based 800 MHz licensees to determine whether or not they are required to reconfigure their 800 MHz systems. It is not intended for use by non-800 MHz stakeholders for commercial or business development purposes or by anyone for unlawful purposes. Some of the information in the search tools is derived from publicly-available data from the Universal Licensing System (ULS) of the Federal Communications Commission. The 800 MHz Transition Administrator cannot guarantee the accuracy of this data. The 800 MHz Transition Administrator has used its best efforts to ensure that these search tools contain accurate information. As the ULS database frequently changes, however, the 800 MHz Transition Administrator cannot guarantee the accuracy, timeliness, reliability, or completeness of any of the information contained on, downloaded, or accessed from these search tools. In no event shall the TA be liable for any damages whatsoever arising out of or in connection with the use of information available on these search tools. Any questions or comments regarding the search tools should be sent to TATools@800TA.org.

Your query results will display below (you may copy/paste from the table to a spreadsheet):

Base Station Freq MHz	Mobile Freq MHz	Old FCC Channel #	New FCC Channel #	NPSPAC Region	Wave	SE-ESMR Region	Post Reconfiguration Category	Reconfiguration Action	TX Address	TxCity	TxState	TxLatitude	TxLongitude
858.1625	813.1625	287	397	44	2	No	Interleaved	No reconfiguration required	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4
859.1625	814.1625	327	437	44	2	No	Interleaved	No reconfiguration required	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4
860.1625	815.1625	367	477	44	2	No	Expansion Band	Public Safety Licensees Only Reconfigured (they can opt out)	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4
860.6375	815.6375	386	496	44	2	No	Expansion Band	Public Safety Licensees Only Reconfigured (they can opt out)	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4
861.0875	816.0875	404	514	44	2	No	Guard Band	Cleared by Nextel	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4

ATTACHMENT 3

Federal Communications Commission
Wireless Telecommunications Bureau

Radio Station Authorization (Reference Copy)

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Licensee: KELLY COMMUNICATIONS INC

ATTN DAVE KELLY
KELLY COMMUNICATIONS INC
704 HANNA WOODS
CRAMERTON, NC 28302

FCC Registration Number (FRN):	
Call Sign: KNRT449	**File Number:**
Radio Service: YX - SMR, 806-821/851-866 MHz, Trunked	
Regulatory Status: CMRS	
Frequency Coordination Number:	

Grant Date	Effective Date	Expiration Date	Print Date
10/31/1995	10/31/1995	10/31/2000	04/29/2005

STATION TECHNICAL SPECIFICATIONS

Fixed Location Address or Mobile Area of Operation

Loc. 1 **Address:** 340 PRINCE ST

City: BECKLEY **County:** RALEIGH **State:** WV

Lat (NAD83): 37-46-45.4 N **Long (NAD83):** 081-11-14.4 W **ASR No.:** **Ground Elev:** 767.0

Loc. 2 **Area of Operation**
Operating within a 113.0 km radius around fixed location 1

Antennas

Loc. No.	Ant. No.	Frequencies (MHz)	Sta. Cls.	No. Units	No. Pagers	Emmission Designator	Output Power (watts)	ERP (watts)	Ant. Ht./Tp meters	Ant. AAT meters	Construct Deadline Date
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1	1	860.63750	FB2C	1	0	20K0F3E 16K0F1D	150.000	1000.000	58.0	135.0	
1	1	861.08750	FB2C	1	0	20K0F3E 16K0F1D	150.000	1000.000	58.0	135.0	
2	1	806.00000-821.00000	MO	4	0	20K0F3E 16K0F1D	100.000	100.000			

Control Points **Pt. No.**1

Address: 704 HANNA WOODS

City: CRAMERTON **County:** **State:** NC **Telephone Number:** (704)824-5566

Associated Call Signs
None

Waivers/Conditions
None

Conditions
Pursuant to Section 309(h) of the Communications Act of 1934, as amended, 47 U.S.C. Section 309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. Section 310(d). This license is subject in terms to the right of use or control conferred by Section 706 of the Communications Act of 1934, as amended. See 47 U.S.C. Section 706.

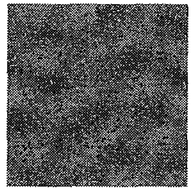
ATTACHMENT 4	*Call Sign Checker*
TA Home Page	Enter your call sign knrt449 Submit

KNRT449

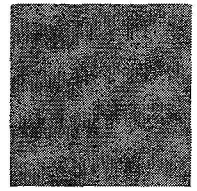
Service Code: YX : SMR, 806-821/851-866 MHz, Trunked

KELLY COMMUNICATIONS INC

704 HANNA WOODS
CRAMERTON NC 28302



Prioritization Waves - click on map for larger image



Prioritization Schedule - click on chart for larger image

These search tools are intended to assist site-based 800 MHz licensees to determine whether or not they are required to reconfigure their 800 MHz systems. It is not intended for use by non-800 MHz stakeholders for commercial or business development purposes or by anyone for unlawful purposes. Some of the information in the search tools is derived from publicly-available data from the Universal Licensing System (ULS) of the Federal Communications Commission. The 800 MHz Transition Administrator cannot guarantee the accuracy of this data. The 800 MHz Transition Administrator has used its best efforts to ensure that these search tools contain accurate information. As the ULS database frequently changes, however, the 800 MHz Transition Administrator cannot guarantee the accuracy, timeliness, reliability, or completeness of any of the information contained on, downloaded, or accessed from these search tools. In no event shall the TA be liable for any damages whatsoever arising out of or in connection with the use of information available on these search tools. Any questions or comments regarding the search tools should be sent to TATools@800TA.org.

Your query results will display below (you may copy/paste from the table to a spreadsheet):

Base Station Freq MHz	Mobile Freq MHz	Old FCC Channel #	New FCC Channel #	NPSPAC Region	Wave	SEA ESMR Region	Post Reconfiguration Category	Reconfiguration Action	Tx Address	TxCity	TxState	TxLatitude	TxLongitude
858.1625	813.1625	287	397	44	2	No	Interleaved	No reconfiguration required	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4
859.1625	814.1625	327	437	44	2	No	Interleaved	No reconfiguration required	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4
860.1625	815.1625	367	477	44	2	No	Expansion Band	Public Safety Licensees Only Reconfigured (they can opt out)	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4
860.6375	815.6375	386	496	44	2	No	Expansion Band	Public Safety Licensees Only Reconfigured (they can opt out)	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4
861.0875	816.0875	404	514	44	2	No	Guard Band	Cleared by Nextel	340 PRINCE ST	BECKLEY	WV	37-46-45.4	81-46-45.4