

NEOMEDIA TECHNOLOGIES INC
Form 8-K
December 07, 2006

U.S. 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): December 6, 2006

NEOMEDIA TECHNOLOGIES, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
Incorporation)

0-21743
(Commission File Number)

36-3680347
(IRS Employer Identification
No.)

**2201 Second Street, Suite
600,
Fort Myers, Florida**
(Address of Principal
Executive Offices)

33901
(Zip Code)

(239) - 337-3434
(Registrant's Telephone
Number,
including Area Code)

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

- 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))
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ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

ITEM 2.01. COMPLETION OF ACQUISITION OR DISPOSITION OF ASSETS

Disposition of Material Portion of Ownership in Mobot, Inc.

On February 17, 2006, NeoMedia Technologies, Inc. (“NeoMedia”) acquired all of the outstanding shares of Mobot, Inc. (“Mobot”) of Lexington, Massachusetts, in exchange for \$3,500,000 cash and 16,931,493 shares of NeoMedia common stock, plus forgiveness of notes payable totaling \$1,500,000 due from Mobot to NeoMedia. Pursuant to the terms of the merger agreement, the number of shares of NeoMedia common stock that were issued as stock consideration was calculated using a share price of \$0.3839, which was the volume-weighted average closing price of NeoMedia common stock for the ten days up to and including February 8, 2006. The merger agreement between NeoMedia and Mobot also contained a provision that, in the event that NeoMedia’s stock price at the time the consideration shares become saleable is less than \$0.3839, NeoMedia would be obligated to compensate Mobot shareholders in cash for the difference between the price at the time the shares become saleable and \$0.3839. Assuming a stock price at the time the shares become saleable of \$0.058, which was the last sale price on December 1, 2006, NeoMedia would have had a cash liability of \$5.5 million resulting from this clause (the “Purchase Price Guarantee Obligation”).

On December 6, 2006, NeoMedia and FMS Group, Inc. (“FMS”), a group consisting of former shareholders of Mobot, completed a transaction pursuant to which NeoMedia divested of a material portion of its ownership interest in Mobot. The material terms of the transaction are as follows:

- NeoMedia transferred 100% of its ownership interest in Mobot to FMS, and in return received 18% ownership in FMS, which will operate the Mobot business;
- All obligations under the original merger agreement, including the Purchase Price Guarantee Obligation, were terminated;

NeoMedia contributed \$67,000 cash to FMS at closing, and entered into a promissory note for an additional \$200,000 payable to FMS at the earlier of the sale of NeoMedia’s Micro Paint Repair or December 31, 2006;

NeoMedia received 16,931 preference shares in FMS that can be redeemed to reacquire the 16,931,493 original consideration shares originally issued by NeoMedia to acquire Mobot. Each preference share can be redeemed for 1,000 shares of the NeoMedia common stock at NeoMedia’s discretion within 15 months of the closing of this transaction. After 15 months, the preference shares can be redeemed upon a liquidation event of FMS, for either 1,000 shares of NeoMedia common stock each, or for the current cash equivalent of the shares, at FMS’ discretion;

NeoMedia and FMS entered into a license agreement, pursuant to which NeoMedia received a license to use the Mobot image recognition service for barcode-related applications. The license is exclusive in the Americas, Europe and Australia, restricted in Japan, Korea, and Singapore, and non-exclusive in other areas of the world. The exclusivity is subject to NeoMedia meeting certain minimum transaction volume requirements or making minimum cash payments; and

NeoMedia entered into a mutual release with each of the former Mobot shareholders in which the parties released each other from the terms of the original Mobot merger agreement, and the former Mobot shareholders consented to the release of the pending legal action against NeoMedia.

The transaction documents are attached hereto as exhibits 16.1 through 16.5. On December 7, 2006, NeoMedia issued a press release with respect to the Agreement, attached hereto as Exhibit 16.6.

ITEM 9.01. FINANCIAL STATEMENTS, PRO FORMA INFORMATION AND EXHIBITS

Pro Forma Financial Information

Notes to Unaudited Pro Forma Condensed Combined Financial Statements

1. Basis of Presentation

Current Transaction

Acquisition and Disposition of Mobot, Inc.

On February 17, 2006, NeoMedia Technologies, Inc. (“NeoMedia”) acquired all of the outstanding shares of Mobot, Inc. (“Mobot”) of Lexington, Massachusetts, in exchange for \$3,500,000 cash and 16,931,493 shares of NeoMedia common stock, plus forgiveness of notes payable totaling \$1,500,000 due from Mobot to NeoMedia. Pursuant to the terms of the merger agreement, the number of shares of NeoMedia common stock that were issued as stock consideration was calculated using a share price of \$0.3839, which was the volume-weighted average closing price of NeoMedia common stock for the ten days up to and including February 8, 2006. The merger agreement between NeoMedia and Mobot also contained a provision that, in the event that NeoMedia’s stock price at the time the consideration shares become saleable is less than \$0.3839, NeoMedia would be obligated to compensate Mobot shareholders in cash for the difference between the price at the time the shares become saleable and \$0.3839. Assuming a stock price at the time the shares become saleable of \$0.058, which was the last sale price on December 1, 2006, NeoMedia would have had a cash liability of \$5.5 million resulting from this clause (the “Purchase Price Guarantee Obligation”).

On December 6, 2006, NeoMedia and FMS Group, Inc. (“FMS”), a group consisting of former shareholders of Mobot, completed a transaction pursuant to which NeoMedia divested of a material portion of its ownership interest in Mobot. The material terms of the transaction are as follows:

- NeoMedia transferred 100% of its ownership interest in Mobot to FMS, and in return received 18% ownership in FMS, which will operate the Mobot business;
- All obligations under the original merger agreement, including the Purchase Price Guarantee Obligation, were terminated;

NeoMedia contributed \$67,000 cash to FMS at closing, and entered into a promissory note for an additional \$200,000 payable to FMS at the earlier of the sale of NeoMedia’s Micro Paint Repair or December 31, 2006;

NeoMedia received 16,931 preference shares in FMS that can be redeemed to reacquire the 16,931,493 original consideration shares originally issued by NeoMedia to acquire Mobot. Each preference share can be redeemed for 1,000 shares of the NeoMedia common stock at NeoMedia’s discretion within 15 months of the closing of this transaction. After 15 months, the preference shares can be redeemed upon a liquidation event of FMS, for either 1,000 shares of NeoMedia common stock each, or for the current cash equivalent of the shares, at FMS’ discretion;

NeoMedia and FMS entered into a license agreement, pursuant to which NeoMedia received a license to use the Mobot image recognition service for barcode-related applications. The license is exclusive in the Americas, Europe and Australia, restricted in Japan, Korea, and Singapore, and non-exclusive in other areas of the world. The exclusivity is subject to NeoMedia meeting certain minimum transaction volume requirements or making minimum cash payments; and

NeoMedia entered into a mutual release with each of the former Mobot shareholders in which the parties released each other from the terms of the original Mobot merger agreement, and the former Mobot shareholders consented to the release of the pending legal action against NeoMedia.

Other Material Acquisitions Since Last Fiscal Year-end

Acquisition and Disposition of Sponge Ltd.

On February 20, 2006, NeoMedia acquired all of the outstanding shares of Sponge Limited (“Sponge”) of London in exchange for (i) approximately \$6 million cash, (ii) 33,097,135 shares of NeoMedia common stock with a fair market value at the time of acquisition of approximately \$13.1 million, and (iii) approximately \$4.4 million contingent consideration in the form of NeoMedia common stock if, during the two-year period beginning at closing, the Sponge business earned in excess of approximately \$2.3 million in net profits. Pursuant to the terms of the original merger agreement, the number of shares of NeoMedia common stock to be issued as consideration was calculated using a share price of \$0.384, which was the volume-weighted average closing price of NeoMedia common stock for the ten days up to and including February 8, 2006. The merger agreement stipulated that, in the event that NeoMedia’s stock price at the time the consideration shares became saleable was less than \$0.384, NeoMedia would have been obligated to compensate Sponge shareholders in cash for the difference between the price at the time the shares became saleable and \$0.384.

On November 14, 2006, NeoMedia and Sponge signed a definitive share purchase and settlement agreement, pursuant to which NeoMedia divested of a material portion of its ownership interest in Sponge. The material terms of the Agreement are as follows:

- NeoMedia returned 92.5% of its ownership interest in Sponge, retaining 7.5% ownership of Sponge;
 - NeoMedia relinquished its Board of Directors positions at Sponge
- The 33,097,135 shares of NeoMedia common stock that were issued as consideration to acquire Sponge were returned to NeoMedia and retired;
- All obligations under the original merger agreement, including the purchase price guarantee obligation, were terminated; and
- Sponge returned \$100,000 cash (before attorney fees) to NeoMedia at closing and is obligated to return an additional \$150,000 cash to NeoMedia on March 7, 2007.

Acquisition of Gavitec AG

On February 17, 2006, NeoMedia and Gavitec AG (“Gavitec”) of Wuerselen, Germany, signed a definitive sale and purchase agreement, subject to closing conditions, under which NeoMedia acquired all of the outstanding shares of Gavitec in exchange for \$1,800,000 cash and 13,660,511 shares of NeoMedia common stock, calculated by dividing \$5,400,000 by the volume-weighted average closing price of NeoMedia common stock for the ten days up to and including February 16, 2006. On February 23, 2006, NeoMedia and Gavitec completed the closing requirements and the acquisition became effective. In the event that NeoMedia’s stock price at the time the consideration shares are saleable is less than \$0.389, NeoMedia is obligated to compensate Gavitec shareholders in cash for the difference between the price at the time the shares become saleable and \$0.389.

Acquisition of 12Snap AG

On February 10, 2006, NeoMedia and 12Snap AG (“12Snap”) of Munich, Germany, signed a definitive sale and purchase agreement, subject to closing conditions, under which NeoMedia acquired all of the outstanding shares of 12Snap in exchange for \$2,500,000 cash and 49,294,581 shares of NeoMedia common stock. On February 28, 2006, NeoMedia and 12Snap completed the closing requirements and the acquisition became effective. Pursuant to the terms of the merger agreement, the number of shares of NeoMedia common stock to be issued as consideration was calculated using a share price of \$0.3956. In the event that NeoMedia’s stock price at the time the consideration shares are saleable is less than \$0.3956, NeoMedia is obligated to compensate 12Snap shareholders in cash for the difference between the price at the time the shares become saleable and \$0.3956.

Acquisition of BSD Software, Inc.

On March 21, 2006, NeoMedia acquired all of the outstanding common shares of BSD Software, Inc. (“BSD”) of Calgary, Canada. Pursuant to the terms of the merger, BSD was merged with and into NeoMedia Telecom Services, Inc., a wholly-owned subsidiary of NeoMedia. The separate corporate existence of BSD ceased as of the effective time of the merger, and NeoMedia Telecom Services, Inc. continues as the surviving corporation. In exchange for all of the outstanding shares of BSD, NeoMedia issued 7,123,698 shares of its common stock,

valued at \$0.3467, which is the volume-weighted average closing price of NeoMedia stock for the five days prior to the effective time of the merger. Each BSD shareholder received approximately 0.2019 share of NeoMedia common stock for each share of BSD common stock held.

Audited financials statements for Mobot were included in amendment no. 1 to form 8-K filed with SEC on May 3, 2006. Audited financials statements for Sponge were included in amendment no. 2 to form 8-K filed with SEC on June 21, 2006. Audited financials statements for Gavitec were included in amendment no. 1 to form 8-K filed with SEC on May 8, 2006. Audited financials statements for 12Snap were included in amendment no. 1 to form 8-K filed with SEC on May 8, 2006. Audited financials statements for BSD were included in amendment no. 1 to form 8-K filed with SEC on June 2, 2006. The balance sheets of Mobot, Sponge, Gavitec, 12 Snap and BSD as of September 30, 2006 are included in NeoMedia's condensed consolidated balance sheet as of September 30, 2006 as reported on form 10-Q. The results of operations of Mobot, Sponge, Gavitec, 12 Snap and BSD are included from the respective acquisition date of each company through September 30, 2006 in NeoMedia's condensed consolidated results of operations for the nine months ended September 30, 2006 as reported on form 10-Q. Mobot and Sponge balance sheets as of September 30, 2006, and Mobot, Sponge, Gavitec, 12 Snap and BSD statements of operations for the nine months ended September 30, 2006 and the year ended December 31, 2005 are shown in this filing for pro forma purposes only.

Presentation

The unaudited pro forma condensed combined historical statement of operations for the year ended December 31, 2005 gives effect to the acquisitions of Gavitec, 12Snap, and BSD as if they had occurred as of January 1, 2005, combining the historical results of NeoMedia for the year ended December 31, 2005 with the historical results of each entity for the year ended December 31, 2005. The acquisition and disposition of Sponge and Mobot are assumed to have occurred on January 1, 2005, such that the net effect of the Sponge acquisition and disposition and the Mobot acquisition and disposition on the pro forma consolidated results of operations for the year ended December 31, 2005 is zero. Sponge and Mobot's operations for the year ended December 31, 2005 are shown separately in the pro forma statement of operations for informational purposes only.

The unaudited pro forma condensed combined historical statement of operations for the nine months ended September 30, 2006 gives effect to the acquisitions of Gavitec, 12Snap, and BSD as if they had occurred as of January 1, 2006, combining the historical results of NeoMedia for the nine months ended September 30, 2006 with the historical results of each entity for the nine months ended September 30, 2006. The acquisition and disposition of Sponge and Mobot are assumed to have occurred on January 1, 2006, such that the net effect of the Sponge acquisition and disposition and the Mobot acquisition and disposition on the pro forma consolidated results of operations for the nine months ended September 30, 2006 is zero. Sponge and Mobot's operations for the nine months ended September 30, 2006 are shown separately in the pro forma statement of operations for informational purposes only.

The unaudited pro forma condensed combined balance sheet as of September 30, 2006 gives effect to the acquisitions of Gavitec, 12Snap, and BSD as if they had occurred as of September 30, 2006. The acquisition and disposition of Sponge and Mobot are also assumed to have occurred on September 30, 2006, such that the net effect of the Sponge acquisition and disposition and the Mobot acquisition and disposition on the pro forma condensed combined balance sheet as of September 30, 2006 is zero.

The unaudited pro forma combined financial statements included in this filing have been prepared by the managements of NeoMedia, Mobot, Sponge, Gavitec, 12Snap, and BSD without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations. However, the managements of NeoMedia, Mobot, Sponge, Gavitec, 12Snap, and BSD believe that the disclosures are adequate to make the information not misleading.

The pro forma adjustments are based on currently available information and upon estimates and assumptions that we believe are reasonable under the circumstances. The unaudited pro forma financial data do not purport to represent what NeoMedia's financial position or results of operations would actually have been if such transactions had occurred on those dates and are not necessarily representative of NeoMedia's financial position or results of operations for any future period. The unaudited pro forma financial statements should be read in conjunction with the separate historical financial statements and footnotes of NeoMedia included in Form 10-KSB for the year ended December 31, 2005 and in Form 10-Q for the three and nine months ended September 30, 2006, with the separate historical financial statements and footnotes of Mobot for the years ended December 31, 2005 and 2004 (included in Form 8-K/A filed with the SEC on May 3, 2006), with the separate historical financial statements and footnotes of Sponge for the years ended September 30, 2005 and 2004 (included in Form 8-K/A filed with the SEC on June 21, 2006), with the separate historical financial statements and footnotes of Gavitec for the years ended December 31, 2005 and 2004 (in Form 8-K/A filed with the SEC on May 8, 2006), with the separate historical financial statements and footnotes of 12Snap for the years ended December 31, 2005 and 2004 (included in Form 8-K/A filed with the SEC on May 8, 2006), and with the separate historical financial statements and footnotes of BSD for the years ended December 31, 2005 and 2004 (included in Form 8-K/A filed with the SEC on June 2, 2006).

2. Preliminary Price Allocation

A final determination of the allocation of the sale of the assets and liabilities of Sponge and Mobot have not been made. The allocation reflected in the unaudited pro forma combined financial statements is based on management's best judgment and estimate of the accounting treatment of the transaction, and should be considered preliminary. The final allocation could differ materially from the pro forma allocation included herein.

3. Pro forma Net Loss Per Share

The pro forma basic and dilutive net loss per share are based on the pro forma weighted average number of shares of NeoMedia's common stock as if the shares issued to acquire Mobot, Gavitec, 12Snap, and BSD had been issued at the beginning of the period shown, and as if Sponge shares were issued and retired at the beginning of the period shown. Dilutive shares are not included in the computation of pro forma dilutive net loss per share as their effect would be anti-dilutive.

NeoMedia Technologies, Inc.
Unaudited Pro-forma Condensed Combined Balance Sheet
September 30, 2006
(In thousands of US Dollars)

ASSETS	(A)	Pro-forma	Pro-forma	Pro-forma
	NeoMedia	Adjustments	Adjustments	Consolidated
	(unaudited)	Disposition	Disposition	(unaudited)
		of Sponge (F)	of Mobot (G)	
		(unaudited)	(unaudited)	
Current assets:				
Cash and cash equivalents	\$ 3,133	\$ (206)	\$ (225)	(E) \$ 2,702
Trade accounts receivable, net	6,097	(785)	(46)	5,266
Inventories, net	53	—	—	53
Investment in marketable securities	255	—	—	255
Prepaid expenses and other current assets	753	111	(34)	(E) 830
Assets held for sale from Micro Paint Repair business unit;	3,451	—	—	3,451
Total current assets	13,742	(880)	(305)	12,557
Property and equipment, net	564	(43)	(28)	493
Capitalized patents, net	2,922	—	(8)	2,914
Customer contracts and relationships	2,239	(352)	(386)	(C) 1,501
Capitalized software platform	13,655	(1,188)	(3,839)	(C) 8,628
Other intangible assets	2,589	(796)	(82)	(C) 1,711
Goodwill	50,082	(16,799)	(6,778)	(C) 26,505
Long Term investment in Sponge and Mobot	0	1,456	2,105	(D) 3,561
Cash surrender value of life insurance policy	797	—	—	797
Other long-term assets	1,232	—	(7)	1,225
Total assets	\$ 87,822	\$ (18,602)	\$ (9,328)	\$ 59,892
LIABILITIES AND SHAREHOLDERS' DEFICIT				
Current liabilities:				
Accounts payable	\$ 5,550	\$ (96)	\$ —	\$ 5,454
Accrued expenses	4,771	(809)	(6)	3,956
Amounts payable under settlement agreements	97	—	—	97
Taxes payable	1,178	(29)	—	1,149
Deferred revenues and other	1,925	(75)	(258)	1,592
Liabilities in excess of assets of discontinued business unit	676	—	—	676
Notes and loans payable	2,340	—	200	(H) 2,540
Liabilities held for sale from Micro Paint Repair business unit	750	—	—	750
Derivative financial instruments	26,677	—	—	26,677
Total current liabilities	43,964	(1,009)	(64)	42,891

Long-term debt and convertible debentures	73	—	—	73
Shareholders' deficit:				
Preferred stock	2,931	—	—	2,931
Common stock (B)	6,552	(331)	— (B)	6,221
Preferred stock of Mobot owned by NeoMedia	—	—	(9,264) (I)	(9,264)
Additional paid-in capital	155,359	(17,262)	— (B)	138,097
Accumulated other comprehensive income (loss)	(660)	—	—	(660)
Retained earnings (accumulated deficit)	(119,618)	—	—	(119,618)
Treasury stock	(779)	—	—	(779)
Total shareholders' deficit	43,785	(17,593)	(9,264)	16,928
Total liabilities and shareholders' deficit	\$ 87,822	\$ (18,602)	(9,328)	\$ 59,892

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Pro-forma Adjustments

- (A) - NeoMedia consolidated balance sheet as of September 30, 2006 includes Sponge and Mobot balances.
- (B) - Adjustment to retire 33,097,135 shares of common stock returned from Sponge to NeoMedia pursuant to the terms of the disposition agreement. As of September 30, 2006, NeoMedia's \$0.01 par value common stock consists of 5,000,000,000 authorized shares, 656,853,390 historical shares and 623,756,255 pro forma shares issued; and 655,211,964 historical shares and 622,114,829 pro forma shares outstanding.
- (C) - Adjustment to remove intangible assets and goodwill related to the disposition of Sponge and Mobot.
- (D) - Adjustments to establish 7.5% remaining ownership of Sponge, based on actual fair value paid by NeoMedia for Sponge of \$19.4 million, and 18.0% remaining ownership of Mobot, based on actual fair value paid by NeoMedia for Mobot of \$11.7 million.
- (E) - Adjustment to reflect \$36,000 cash being returned from Sponge, \$150,000 note receivable due to NeoMedia from Sponge, and \$100,000 cash paid by NeoMedia to Mobot, net of \$125,000 and \$242,000 of cash for Mobot and Sponge respectively already included in NeoMedia's reported numbers in item (A) above.
- (F) - This column reflects Sponge balance sheet amounts included in NeoMedia's consolidated balance sheet as of September 30, 2006.
- (G) - This column reflects Mobot balance sheet amounts included in NeoMedia's consolidated balance sheet as of September 30, 2006.
- (H) - Adjustment to reflect the \$200,000 cash payable from NeoMedia to Mobot per the disposition agreement.
- (I) - Adjustment to reflect the convertible preferred stock of Mobot to be held by NeoMedia. NeoMedia expects to redeem this convertible preferred stock to reacquire the 16,931,493 original consideration shares issued by NeoMedia to acquire Mobot.

NeoMedia Technologies, Inc.
Unaudited Pro-forma Combined Condensed Statement of Operations
For the Nine Months Ended September 30, 2006
(In thousands of US Dollars, except per share data)

	Neo-Media (unaudited)	Acquisition (A) Robot (unaudited)	Acquisition (A) Sponge (unaudited)	Acquisition (A) Gavitec (unaudited)	Acquisition (A) 12Snap (unaudited)	Acquisition (A) BSD (unaudited)	Disposition (B) Sponge (unaudited)	Disposition (B) Robot (unaudited)	(F) Pro Forma Adjust- ments (unaudited)	(C) Pro Forma Adjust- ments (unaudited)	Pro Forma Consol- idated (unaudited)
Net sales	\$ 14,129	\$ 344	\$ 1,488	\$ 953	\$ 8,457	\$ 8,479	\$ (1,488)	\$ (344)	\$ (1,292)	\$ (12,585)	\$ 18,141
Cost of sales	8,887	83	410	325	3,023	6,918	(410)	(83)	(310)	(7,449)	(D) 11,394
Gross profit	5,242	261	1,078	628	5,434	1,561	(1,078)	(261)	(982)	(5,135)	6,748
Selling, general and administrative expenses	13,471	837	1,536	660	4,388	1,113	(1,536)	(837)	(1,874)	(4,714)	(D) 13,044
Stock based compensation expense	4,948	—	—	—	—	—	—	—	—	—	4,948
Research and development costs	2,309	431	—	451	932	—	—	(431)	(396)	(1,131)	2,165
Income (loss) from operations	(15,486)	(1,007)	(458)	(483)	114	448	458	1,007	1,288	709	(13,410)
Loss on extinguishment of debt, net	(1,858)	—	—	55	—	—	—	—	—	—	(1,803)
Other income (loss)	—	—	—	—	—	—	—	—	—	—	0
Write off of deferred equity financing costs	(13,256)	—	—	—	—	—	—	—	—	—	(13,256)
Change in fair value from revaluation of warrants and embedded conversion features	6,523	—	—	—	—	—	—	—	—	—	6,523
Interest income (expense), net	(191)	—	—	—	—	—	—	—	—	—	—