EXHIBITS 1 THROUGH 5
EXHIBIT 1
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

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

For the Fiscal Year Ended December 31, 2003

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

For the transition period from to

Commission file number 000-23305

First Virtual Communications, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of incorporation or organization) 77-0357037
(I.R.S. Employer identification No.)

3200 Bridge Parkway, Suite 202
Redwood City, CA 94065
(Address of principal executive offices) (Zip code) 94065

(650) 801-6500

(Registrant’s Telephone Number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, $0.001 par value

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant’s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to this Form 10-K. ☐

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). Yes ☐ No ☐

As of June 30, 2003 there were 8,100,682 shares of the registrant’s Common Stock outstanding, and the aggregate market value of such shares held by non-affiliates of the registrant (based upon the closing sale price of $4.44 for such shares on The Nasdaq SmallCap Market on June 30, 2003) was approximately $23.6 million. Shares of the registrant’s Common Stock held by each executive officer, director and holder of five percent or more of the registrant’s Common Stock outstanding as of June 30, 2003 have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of shares of Common Stock outstanding as of March 15, 2004 was 14,564,271.

DOCUMENTS INCORPORATED BY REFERENCE

Designated portions of the registrant’s definitive proxy statement for the 2004 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

The definitive proxy statement is expected to be filed not later than 120 days after the end of the registrant’s fiscal year.
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PART I

Item 1. Business

In addition to the historical information contained in this report, this report contains forward-looking statements within the meaning of Section 27(a) of the Securities Act of 1933, as amended (the "Securities Act") and Section 21(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") that involve risks and uncertainties. These forward-looking statements include, without limitation, statements containing the words “believes,” “anticipates,” “expects,” and words of similar import. Such forward-looking statements will have known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Company, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such factors include, among others, the risk factors set forth below, under “Overview,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this Form 10-K. The Company assumes no obligation to update any forward-looking statements contained herein.

Overview

Founded in 1993, First Virtual Communications, Inc., a Delaware corporation, started as a manufacturer of video networking equipment and has developed into a provider of software infrastructure and solutions for real-time rich media communications. The Company delivers integrated communications software solutions that address the needs of a geographically distributed workforce, that needs to work together to collaborate, train, demonstrate or sell. The Company has helped to define IP-based communications by pushing the boundaries of conferencing for a better user experience, easier enterprise deployment and a potentially greater return on investment. The Company's products provide business quality communication by supporting a wide range of industry standards. The Company's software solutions integrate seamlessly with existing tools and methodologies, such as e-mail and web browsing, while extending the advantages of instant messaging and collaboration environments, such as Windows Messenger. The Company's innovative solutions are deployed in over 1,200 customer sites worldwide, including Fortune 500 companies, government agencies and service providers.

In June 2001, the Company acquired CUseeMe Networks, a company that specialized in delivering innovative software-based solutions to enable voice, video, and data collaboration over IP-based enabling large-scale deployments of real-time rich media collaboration to enterprise desktops. Following the merger, the Company began to transition from its hardware-based product line of specialty networking equipment to being a completely software-based solution for real-time, rich media communications. First Virtual Communications now provides a broad range of integrated real-time rich media communications software solutions to enterprise customers, government agencies and service providers worldwide.

The Company is leveraging its real-time audio and video technology as well as web-based collaboration to capitalize on the rapidly emerging opportunity to provide real-time rich media software solutions to enterprise, government and education markets, either as systems sold through channels or services delivered through service providers. Our web-based Click to Meet products provide a framework for real-time rich media communication that is simple to use, fully integrated and effectively manages all of the components of an end to end solution while hiding traditional complexities from the end user.

Our Click to Meet products have been well received by the market and are gaining recognition as a robust and versatile real-time rich media communications software solution. Click to Meet Express, our web conferencing application, received positive recognition in a number of publications including Internet Telephony Magazine, Network World, Learning & Leading with Technology, Home Office Magazine, and Vision and Packet Magazine. Click to Meet also won the Editor's Choice award and an overall A-grade rating from Internet Telephony Magazine, while Click to Meet Express was named Product of the Year by that publication. Click to Meet rich media conferencing solution was also named "Best Innovative Use of Technology" at the Cisco Systems' Innovation Through Convergence Exposition, held in Dallas, Texas in April of 2002.

During the year ending December 31, 2003, 97% of the Company’s revenues were from sales to resellers or partners and 3% derived from direct sales by the Company’s sales force.

The Company markets its solutions to enterprise customers, including business customers, government users, education and healthcare providers. The Company’s products have been certified as part of the Defense Collaboration Tool Suite within the United States Department of Defense and, as a result, the Company has achieved substantial traction within the United States military. The Company also sells its products to service providers, including AT&T, Verizon, NTT, China Telecom and Chunghwa Telecom, all of which are deploying broadband rich media conferencing services using the Company’s products and solutions. Our rich media communications solutions enable telecommunications carriers to deliver a comprehensive set of rich media applications over the carrier’s existing broadband networks into conference rooms, as well as to the users’ desktops.

For the year ended December 31, 2003, 91% of the Company’s revenue was from enterprise customers and 9% was from service providers, while for the year ended December 31, 2002, 80% of the Company’s revenue was from enterprise customers and 20% was from service providers.

In 2003, 2002 and 2001, Comp View, Inc., AT&T Corporation and EDS Operating Services each represented more than 10% of total revenue. At December 31, 2003 and 2002, outstanding receivables from one customer represented 18% and 20%, respectively, of accounts receivable.

The Company maintains a network of distributors in Asia and Europe to distribute its products into those markets. The Company’s revenues by geographic region are shown in the following table:

<table>
<thead>
<tr>
<th>Year Ended December 31</th>
<th>2003</th>
<th>2002</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>62%</td>
<td>68%</td>
<td>79%</td>
</tr>
<tr>
<td>Asia</td>
<td>22%</td>
<td>19%</td>
<td>4%</td>
</tr>
<tr>
<td>Europe</td>
<td>16%</td>
<td>13%</td>
<td>17%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

The Company expects that sales to customers outside of North America will continue to represent a significant portion of future revenues.

Revenues from the Company’s international operations are subject to various risks, including seasonality, longer payment cycles, changes in regulatory requirements and tariffs, reduced protection of intellectual property rights, political and economic restraints, and currency risks, among others.

The Company’s revenue is derived primarily from three sources: (i) Software: sales of software licenses (ii) Products: sales of hardware and (iii) Support services: services and support revenue, which includes software license maintenance, training, installation and consulting revenue. The Company’s revenue from Products significantly declined in 2003 after formally announcing that it was exiting that market. Product revenues represented 27% of total revenues in the year ended December 31, 2002 and dropped to 9% during the year ended December 31, 2003. Largely because of this change, the Company has experienced an increase in its gross margins increasing from 66% in the year ended December 31, 2002 to 83% in the year ending December 31, 2003. The Company licenses its software products under perpetual licenses, primarily under a concurrent user model.

The Company applies the provisions of Statement of Position 97-2, Software Revenue Recognition to all transactions involving the sale of software products and hardware transactions where the software is not
that it provides to certain customers and partners. Because of this, many of the competitors cited above also represent potential partners for these infrastructure product offerings.

Many of the Company's current and potential competitors, particularly Microsoft, Polycom and WebEx, have longer operating histories and significantly greater managerial, financial, marketing, technical and other competitive resources, as well as greater name recognition, than does the Company. As a result, these companies may be able to adapt more quickly to new or emerging technologies and changes in customer requirements and may be able to devote greater resources to the promotion and sale of their conferencing products and services.

To remain competitive, we must continue to invest in research and development and sales and marketing. The Company may not have sufficient resources to make those investments or may not succeed in making the technological advances necessary to be competitive. In addition, current and potential competitors have established or may in the future establish collaborative relationships among themselves or with third parties, including third parties with which First Virtual Communications has a relationship, to increase the visibility and utility of their products and services. Accordingly, it is possible that new competitors or alliances may emerge and rapidly acquire a significant market share, which could have a material adverse effect on First Virtual Communications' business, financial condition and results of operations.

Manufacturing

The Company currently produces its products at its facility in Redwood City, California by transferring images of the software to CD-ROM discs and shipping them directly to its customers. Some customers also are provided software through electronic download over the Internet. In the future, it is likely that the Company will also use third parties to perform some, or all, of these activities.

Employees

As of March 15, 2004, the Company employed 140 individuals full-time. In addition, the Company employs a number of temporary, contract employees. The Company’s employees are not represented by a collective bargaining agreement and the Company believes its relationships with its employees are good.

Available Information

We make available free of charge on, or through, our Internet web site our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with, or furnished to, the Securities and Exchange Commission. Our Internet address is http://www.fvc.com. The reference to our web site does not constitute incorporation by reference of the information contained in, or that can be accessed through, our web site.

Risk Factors

In addition to the other information provided in this report, the following risk factors should be considered in evaluating the Company and its business.

The Company has a history of operating losses and will incur losses in the future. The Company may never generate sufficient revenue to achieve profitability.

The Company has incurred operating losses in each quarter since it commenced operations in 1993. The Company expects to continue to devote substantial resources to its research and development and sales and marketing activities. As a result, the Company expects that it will continue to incur operating losses for the foreseeable future. The Company’s revenue decreased from $24.4 million for the year ended December 31, 2002 to $21.3 million for the year ended December 31, 2003. The Company incurred net losses of $24.3 million and $9.9 million for the years ended December 31, 2002 and 2003, respectively. At December 31, 2003, the Company had an accumulated deficit of $121.6 million.
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its revenue in any particular quarter for the foreseeable future. Additionally, a significant portion of the Company’s revenues from software products has been to government agencies, including national, state and local governments in the US and internationally. In 2003, approximately one third of the Company’s revenue was through resellers to the US Federal Government, including the US Department of Defense, various organizations of the US Army, Navy and Air Force, and some agencies on the civilian side of the Federal government. Government customers are often subject to budgetary pressures and may from time to time reduce their expenditures and/or cancel orders. The loss of any major customer, or any reduction or delay in orders by a customer, or the failure of the Company or its distribution partners to market the Company’s products successfully to new customers could have a material adverse effect on the Company’s business, financial condition and results of operations.

Because sales of some of the Company’s products require a lengthy sales effort and implementation cycle, revenue may be unpredictable, and the Company’s business may be harmed.
Sales of some of the Company’s products have required and will continue to require an extended sales effort. For some projects, the period from an initial sales call to an end-user agreement can range from six to twelve months and can be longer. Therefore, the timing of revenue and related cash flows may be unpredictable. Lengthy delays in receiving orders and payment, and recognizing revenue could have a material adverse effect on the Company’s financial condition and results of operations.

Rapid technological change and evolving industry standards and regulations may impair the Company’s ability to develop and market its products and services.
Rapid technological change and evolving industry standards characterize the market for the Company’s products and services. The Company’s success depends, in part, on its ability to maintain technological leadership and enhance and expand its existing product and services offerings. The Company’s success also depends in part upon its ability and the ability of its strategic partners to comply with evolving industry standards. The Company’s products must meet a significant number of domestic and international video, voice and data communications regulations and standards, some of which are evolving as new technologies are deployed. The Company’s products are currently in compliance with applicable regulatory requirements. However, as standards evolve, the Company will be required to modify its products, or develop and support new versions of its products. In addition, telecommunications service providers require that equipment connected to their networks comply with their own environment and standards, which may vary from industry standards.

The Company’s ability to compete successfully is also dependent upon the continued compatibility and interoperability of its products with products and architectures offered by other vendors. The Company’s business, financial condition and results of operations would be materially adversely affected if it were unable in a timely manner to comply with evolving industry standards or to address compatibility issues. In addition, from time to time, the Company may announce new products, capabilities or technologies that have the potential to replace or shorten the life cycle of the Company’s existing product offerings. The announcement of product enhancements or new product or service offerings could cause customers to defer purchasing the Company’s products. In addition, the Company has experienced delays in the introduction of new products in the past and may experience additional delays in the introduction of products currently under development or products developed in the future. The failure of the Company to successfully introduce new products, product enhancements or services on schedule or in time to meet market opportunities, or customer delays in purchasing products in anticipation of new product introductions or because of changes in industry standards, could have a material adverse effect on the Company’s business, financial condition and results of operations.

The Company faces intense competition from other industry participants and may not be able to compete effectively.
The market for real-time rich media communications products, including Web conferencing products and services, is extremely competitive. Because the barriers to entry in the market are relatively low and the potential market is large, the Company expects continued growth in existing competitors and the entrance of
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Item 6. Selected Financial Data

The following table presents summary selected historical data of the Company as of and for each of the five years in the period ended December 31, 2003.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Statement of operations data</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>$21,323</td>
<td>$24,414</td>
<td>$27,661</td>
<td>$40,011</td>
<td>$45,700</td>
</tr>
<tr>
<td>Total operating expenses(1)</td>
<td>27,625</td>
<td>40,472</td>
<td>39,651</td>
<td>37,024</td>
<td>31,803</td>
</tr>
<tr>
<td>Operating loss</td>
<td>(9,882)</td>
<td>(24,437)</td>
<td>(32,540)</td>
<td>(19,844)</td>
<td>(14,954)</td>
</tr>
<tr>
<td>Net loss</td>
<td>(9,974)</td>
<td>(24,222)</td>
<td>(31,601)</td>
<td>(18,787)</td>
<td>(14,328)</td>
</tr>
<tr>
<td>Net loss per share:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and diluted(2)</td>
<td>(1.11)</td>
<td>(0.64)</td>
<td>(6.28)</td>
<td>(5.45)</td>
<td>(4.35)</td>
</tr>
<tr>
<td><strong>Balance sheet data</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash, cash equivalents and short-term investments</td>
<td>12,159</td>
<td>8,435</td>
<td>9,384</td>
<td>23,928</td>
<td>8,821</td>
</tr>
<tr>
<td>Working capital</td>
<td>5,040</td>
<td>735</td>
<td>8,363</td>
<td>31,729</td>
<td>21,878</td>
</tr>
<tr>
<td>Total assets</td>
<td>20,109</td>
<td>19,760</td>
<td>38,158</td>
<td>46,941</td>
<td>40,199</td>
</tr>
<tr>
<td>Total debt</td>
<td>2,500</td>
<td>36</td>
<td>119</td>
<td>228</td>
<td></td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(121,563)</td>
<td>(111,588)</td>
<td>(87,266)</td>
<td>(55,665)</td>
<td>(36,878)</td>
</tr>
<tr>
<td>Total stockholders' equity</td>
<td>8,501</td>
<td>6,773</td>
<td>26,357</td>
<td>36,730</td>
<td>27,812</td>
</tr>
</tbody>
</table>

(1) Operating expenses included non-cash employee stock compensation charges of $32,000, $26,000, $114,000, $267,000, and $493,000, for the years ended December 31, 2003, 2002, 2001, 2000 and 1999, respectively.

(2) See Note 1 to the consolidated financial statements for an explanation of the computation of net loss per share.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion of the financial condition and results of operations of the company should be read in conjunction with the financial statements and the notes thereto included in Part IV, Item 15 of this report on Form 10-K. In addition to the historical information contained in this item, this item contains forward looking statements within the meaning of Section 27(a) of the Securities Act and Section 21(e) of the Exchange Act that involve risks and uncertainties. These forward looking statements include, without limitation, statements containing the words “believe,” “anticipates,” “expects,” and words of similar import. Such forward looking statements will have known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievement of the Company, or industry results to be materially different from any future results, performance or achievements expressed or implied by such forward looking statements. Such factors include, among others, the risk factors set forth above in “Business/Overview,” “Business/Risk Factors,” the risk factors set forth in this item and elsewhere in this Form 10-K. The Company assumes no obligation to update any forward looking statements contained herein.

Overview

The Company delivers integrated, software technologies for real-time rich media Web conferencing and communications solutions. The Company combines its expertise in networking systems, real-time audio and video technology, and Web-based collaboration to provide integrated voice, video, data, text and streaming media solutions for a wide range of real-time rich media applications, including Web conferences, broadcasts, video-on-demand, videoconferences and video calls over converged multi-service networks. The Company was
To the Board of Directors and Stockholders

of First Virtual Communications, Inc.

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a)(1) on page 31, present fairly, in all material respects, the financial position of First Virtual Communications, Inc., and its subsidiaries at December 31, 2003 and 2002, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2003 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company’s management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note I to the consolidated financial statements, effective January 1, 2002, the Company changed its method of accounting for goodwill and other intangible assets in accordance with the guidance provided in the Statement of Financial Accounting Standard No. 142, "Goodwill and Other Intangible Assets".

/S/ PRICEWATERHOUSECOOPERS LLP

San Jose, California

March 26, 2004
Note 1 — The Company and a Summary of its Significant Accounting Policies

The Company

First Virtual Communications, Inc. (the "Company") was incorporated in California under the name First Virtual Corporation in October 1993 and subsequently reincorporated in Delaware in December 1997. In July 1998, the Company changed its name to FVC.COM, Inc., and on February 5, 2001 the Company changed its name to First Virtual Communications, Inc. The Company develops and markets rich media Web conferencing and collaboration solutions for telecommunications service providers, enterprises and government agencies. The Company sells its products worldwide through original equipment manufacturers ("OEM partners"), distributors and resellers.

On June 19, 2001, the Company and CUseeMe Networks, Inc. ("CUseeMe") completed a merger, pursuant to which CUseeMe became a wholly owned subsidiary of the Company. CUseeMe provided innovative software-based solutions to enable voice, video, and data collaboration over IP-based networks. CUseeMe specialized in delivering a solution that was both centrally managed and centrally deployed, enabling large-scale deployments of rich media collaboration to enterprise desktops. As a result of the merger, the Company is able to provide a broad range of integrated real-time rich media Web conferencing solutions that run seamlessly across multiple network types to enterprise customers and service providers worldwide.

The Company’s management structure represents a single reporting segment.

Liquidity

In April of 2003, the Company entered into an agreement with Silicon Valley Bank for a $3 million credit facility that could be used by the Company at any time prior to December 31, 2003. On June 23, 2003, the Company exercised its right under the agreement and borrowed $3 million from the bank.

On April 14, 2003 the Company entered into a private equity line financing agreement with Ralph Ungermann, Executive Chairman of the Company’s Board of Directors, under which the Company may require Mr. Ungermann to purchase up to $1 million of our common stock at a purchase price of $1.55 per share during the period from April 14, 2003 through April 13, 2004. Following completion of the private equity financing in November 2003 the Company determined that use of this line of financing will not be required and it is expected that the line will expire unused on April 13, 2004.

On November 12, 2003, the Company issued 5,732,408 shares of common stock at $1.79 per share and warrants to purchase 2,866,199 shares of common stock at a price of $1.79 per share, resulting in proceeds of approximately $9.3 million net of fees and expenses.

The Company has experienced significant net operating losses from inception. In 2003, the Company incurred net losses of $10.0 million and used $7.8 million of cash in its operating activities. Management expects that operating losses and negative cash flows will continue in 2004. The Company believes that existing cash and investments together with its existing financing will be adequate to fund its operations through December 31, 2004. However, the Company’s cash requirements depend on several factors, including the rate of market acceptance of its products and services, the ability to expand and retain its customer base and other factors. If the Company fails to achieve its planned revenue or expense targets, management believes that it has the plans, intent and the ability to curtail capital and operating spending to ensure that cash and investments will be sufficient to meet the Company’s cash requirements at least for the next twelve months.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities.
financing completed in November 2003 and to Net One Systems Co., Ltd. in October 2003. The investors in the financing included Special Situations Fund, including Special Situations Technology Fund, L.P., of which Adam Stettner, a member of the Company’s Board of Directors, serves as managing director.

In February, 2004, the Company commenced a reduction of approximately 20% of its workforce or approximately 30 employees. The reductions will be primarily in the United States and will result in an estimated cost to the Company in the range of $600,000 to $700,000. The cost of this action will be reflected in the Company’s results for the three months ending March 31, 2004.

QUARTERLY SUMMARY
(Unaudited)

<table>
<thead>
<tr>
<th>Three Months Ended</th>
<th>March 31</th>
<th>June 30</th>
<th>September 30</th>
<th>December 31</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>$5,377</td>
<td>$5,894</td>
<td>$5,374</td>
<td>$4,678</td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>$831</td>
<td>$991</td>
<td>$936</td>
<td>$822</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>$(2,161)</td>
<td>$(2,851)</td>
<td>$(1,940)</td>
<td>$(2,930)</td>
</tr>
<tr>
<td>Net loss</td>
<td>$(2,134)</td>
<td>$(2,885)</td>
<td>$(1,992)</td>
<td>$(2,963)</td>
</tr>
<tr>
<td>Basic and diluted earnings per share</td>
<td>$(0.26)</td>
<td>$(0.36)</td>
<td>$(0.24)</td>
<td>$(0.27)</td>
</tr>
<tr>
<td>Shares used to compute net loss per share</td>
<td>8,097</td>
<td>8,107</td>
<td>8,136</td>
<td>10,959</td>
</tr>
<tr>
<td>Non-recurring charge:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Included in cost of revenues related to inventory valuation</td>
<td>$—</td>
<td>$—</td>
<td>$24</td>
<td>$—</td>
</tr>
<tr>
<td>2002</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>$6,601</td>
<td>$6,644</td>
<td>$6,137</td>
<td>$5,032</td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>$1,348</td>
<td>$2,653</td>
<td>$2,039</td>
<td>$1,339</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>$(1,703)</td>
<td>$(4,592)</td>
<td>$(3,650)</td>
<td>$(14,492)</td>
</tr>
<tr>
<td>Net loss</td>
<td>$(1,674)</td>
<td>$(4,512)</td>
<td>$(3,627)</td>
<td>$(14,509)</td>
</tr>
<tr>
<td>Basic and diluted earnings per share</td>
<td>$(0.25)</td>
<td>$(0.59)</td>
<td>$(0.45)</td>
<td>$(1.80)</td>
</tr>
<tr>
<td>Shares used to compute net loss per share</td>
<td>6,674</td>
<td>7,689</td>
<td>8,055</td>
<td>8,073</td>
</tr>
<tr>
<td>Non-recurring charge:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Included in cost of revenues related to inventory valuation</td>
<td>$—</td>
<td>$(1,000)</td>
<td>$—</td>
<td>$(438)</td>
</tr>
</tbody>
</table>

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EXHIBIT 2
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No. )

Filed by the Registrant ☑
Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement
☐ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
☑ Definitive Proxy Statement
☐ Definitive Additional Materials
☐ Soliciting Material Pursuant to §240.14a-12

First Virtual Communications, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☑ No fee required.
☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:
Click2learn.com, Inc. Mr. Harris holds an M.B.A. from the Columbia University Graduate School of Business and a B.A. in Economics from Rutgers University.

Jonathan G. Morgan
Mr. Morgan, age 50, has served as the Company’s President and Chief Executive Officer since October 2002. Mr. Morgan has served as a director of the Company since the Company’s merger with CUseeMe Networks, Inc. in June 2001. Prior to the merger, Mr. Morgan served as a director of CUseeMe Networks from May 1996. From 1993 until 2001, Mr. Morgan was a Managing Director at Prudential Securities, as well as a Managing Director at Prudential Volpe Technology Group, a division of Prudential Securities, which provided investment banking services to technology companies. In 2001, Mr. Morgan founded and currently is also a Managing Director of Rostrevor Partners, LLC, a strategic consulting services company which provides services to early stage emerging growth companies. Mr. Morgan currently serves as a director and the Chairman of the audit committee of Click2learn.com, Inc. and as a director of Corticon Technologies, Inc. Mr. Morgan holds an H.B.A. from the University of Western Ontario, London, located in Ontario, Canada.

Directors Continuing in Office Until the 2005 Annual Meeting

Adam Stettner
Mr. Stettner, age 40, has served as a director of the Company since June 2001. Prior to the Company’s merger with CUseeMe Networks, Inc. in 2001, Mr. Stettner served as a director of CUseeMe Networks from March 1999. Mr. Stettner has been the managing director of Special Situations Technology Fund, L.P., an investment fund, since April 1997. He is also the President of Stettner Consultants, Inc., a computer consulting company, that he formed in 1989. Mr. Stettner received a B.S. in Physics with a minor in Computer Science from Cornell University and an M.S. also from Cornell University.

Werner Schmücking
Mr. Schmücking, age 69, has been a director of the Company since December 2003. He resides in Germany and has recently retired from a 40-year career at Siemens AG, an international electrical engineering and electronics company. Mr. Schmücking developed expertise in Siemens International Telecommunications Business in sales, marketing, product management, services and strategic planning. Mr. Schmücking spent the last eleven years of his career at Siemens serving as vice president of the Private Networks Group and Board Member of the Information Communications Group. Additionally, Mr. Schmücking was president of ZVEI, the German Telecommunications Manufacturer Association, and vice president of Bitcon, an Information Telecommunication and Media Council. Mr. Schmücking currently works as a strategic adviser for the Information and Telecommunications Industry and as member of the supervisory board for several European companies. He currently is Chairman of the Board of SpectraLink Corporation and a director of Wiltel Communications.

Independence of The Board of Directors

As required under The Nasdaq Stock Market (“Nasdaq”) listing standards, a majority of the members of a listed company’s Board of Directors must qualify as “independent,” as affirmatively determined by the Board of Directors. The Board consults with the Company’s counsel to ensure that the Board’s determinations are consistent with all relevant securities and other laws and regulations regarding the definition of “independent,” including those set forth in pertinent listing standards of the Nasdaq, as in effect from time to time.

Consistent with these considerations, after review of all relevant transactions or relationships between each director, or any of his family members, and the Company, its senior management and its independent auditors, the Board affirmatively has determined that all of the Company’s directors are independent directors within the meaning of the applicable Nasdaq listing standards, except for Mr. Morgan, the Chief Executive Officer of the Company.
The following table shows certain information concerning the repricing of options received by the Named Executive Officers during the last ten years.

### Ten Year Option/SAR Repricings

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Number of Securities Underlying Options/SARs Repriced or Amended (#)</th>
<th>Market Price of Stock at Time of Repricing or Amendment ($)</th>
<th>Exercise Price at Time of Repricing or Amendment ($)</th>
<th>New Exercise Price ($)</th>
<th>Length of Original Option Term Remaining at Date of Repricing or Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Morgan</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Cole</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Bundy</td>
<td>2/23/04</td>
<td>1,254(1)</td>
<td>1.83</td>
<td>9.97</td>
<td>$1.83</td>
<td>3.5 years</td>
</tr>
<tr>
<td></td>
<td>2/23/04</td>
<td>1,411(1)</td>
<td>1.83</td>
<td>12.21</td>
<td>$1.83</td>
<td>6.9 years</td>
</tr>
<tr>
<td></td>
<td>2/23/04</td>
<td>5,016(1)</td>
<td>1.83</td>
<td>7.475</td>
<td>$1.83</td>
<td>4.8 years</td>
</tr>
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<td></td>
<td>2/23/04</td>
<td>2,351(1)</td>
<td>1.83</td>
<td>12.21</td>
<td>$1.83</td>
<td>6.9 years</td>
</tr>
<tr>
<td></td>
<td>2/23/04</td>
<td>6,270(1)</td>
<td>1.83</td>
<td>9.97</td>
<td>$1.83</td>
<td>3.5 years</td>
</tr>
<tr>
<td>Mr. Ungermann</td>
<td></td>
<td></td>
<td></td>
<td>$1.83</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Romano</td>
<td></td>
<td></td>
<td></td>
<td>$1.83</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Strecker</td>
<td></td>
<td></td>
<td></td>
<td>$1.83</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Kaplan</td>
<td></td>
<td></td>
<td></td>
<td>$1.83</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Each option was cancelled in exchange for a new grant of an option to purchase one-third the number of shares subject to the cancelled grant, on February 23, 2004.

### COMPENSATION COMMITTEE

Norman Gaut  
Edward Harris  
Werner Schmücking  
George Sollman

### EMPLOYMENT, SEVERANCE AND CHANGE OF CONTROL AGREEMENTS

On October 10, 2003, the Company and Mr. Morgan entered into an employment agreement pursuant to which the Company retained Mr. Morgan’s services as President and Chief Executive Officer. Pursuant to the employment agreement, the Company agreed to pay Mr. Morgan a base salary of $300,000 per year, subject to annual review. In addition, Mr. Morgan will be entitled to annual performance based cash and stock option compensation, subject to the achievement of performance targets to be determined on an annual basis by the Compensation Committee. In connection with his agreement, Mr. Morgan was granted options to purchase an aggregate of 210,000 shares of common stock under the Company’s 1997 Plan and 1999 Plan at an exercise price per share of $4.05, the fair market value of the Company’s common stock on the date of grant. The options vest over four years from the date of grant at the rate of 12.5% of the shares subject to the options vested six months after the date of grant and the remaining shares subject to the option vest in equal monthly installments for the remaining 42 months, which is the Company’s standard vesting schedule. In addition, on October 19, 2003, following execution of his employment agreement, Mr. Morgan was granted an option to purchase 20,000 shares of common stock at $1.50 per share, the fair market value of the Company’s common stock on the date of the grant, pursuant to the terms of the employment agreement. This option was granted under the 1999 Plan and was fully vested on the date of the grant. In the event Mr. Morgan is terminated by the Company without cause, as defined in the agreement, allow Mr. Morgan to exercise any options that are vested as of the date of his termination for a period of six months.
following his termination date and provide Mr. Morgan and his dependents with medical benefits for a period of up to 12 months following Mr. Morgan’s termination.

In January 2003, the Company and Mr. Cole entered into an employment agreement pursuant to which Mr. Cole was hired effective as of December 13, 2002 as Vice President of Finance and Chief Financial Officer. Pursuant to the agreement, the Company agreed to pay Mr. Cole a base salary of $200,000 per year. In addition, Mr. Cole was granted an option to purchase 80,000 shares of common stock under the 1997 Plan at an exercise price of $1.80 per share, the fair market value of the Company’s common stock on the date of grant, subject to the Company’s standard four-year vesting schedule described above for Mr. Morgan. The employment agreement provides that in the event Mr. Cole is terminated by the Company without cause, as defined in the agreement, Mr. Cole will receive a continuation of his base salary for a period of four months following the date of his termination, and medical benefits for himself and his dependents for three months after the date of his termination or until the date he becomes eligible to receive medical benefits from another company or business entity, whichever is earlier.

In September 2003, the Company and Mr. Weinstein entered into an employment agreement pursuant to which Mr. Weinstein was hired as Vice President of Marketing. Pursuant to the agreement, the Company agreed to pay Mr. Weinstein a base salary of $200,000 per year. In addition, Mr. Weinstein was granted an option to purchase 80,000 shares of common stock under the 1997 Plan at an exercise price per share of $2.16, the fair market value of the Company’s common stock on the date of grant, subject to the Company’s standard four-year vesting schedule described above. The employment agreement provides that in the event Mr. Weinstein is terminated by the Company without cause, as defined in the agreement, Mr. Weinstein will receive a continuation of his base salary for a period of three months following the date of his termination, and medical benefits for himself and his dependents for three months after the date of his termination or until the date he becomes eligible to receive medical benefits from another company or business entity, whichever is earlier.

In November 2003, the Company and Mr. Reid entered into an employment agreement pursuant to which Mr. Reid was hired as Vice President of Engineering. Pursuant to the agreement, the Company agreed to pay Mr. Reid a base salary of $190,000 per year. In addition, Mr. Reid was granted an option to purchase 80,000 shares of common stock under the 1997 Plan at an exercise price per share of $2.11, the fair market value of the Company’s common stock on the date of grant, subject to the Company’s standard vesting schedule described above. The employment agreement provides that in the event Mr. Reid is terminated by the Company without cause, as defined in the agreement, Mr. Reid will receive a continuation of his base salary for a period of three months following the date of his termination, and medical benefits for himself and his dependents for three months after the date of his termination or until the date he becomes eligible to receive medical benefits from another company or business entity, whichever is earlier.

In November 2002, the Company and Mr. Kaplan entered into an agreement pursuant to which Mr. Kaplan became Vice President of World Wide Sales. Pursuant to the agreement, the Company agreed to pay Mr. Kaplan a base salary of $180,000 per year through December 31, 2003 and a target commission based bonus for calendar year 2003 of $120,000 if Mr. Kaplan achieved 100% of his sales quota for 2003. Pursuant to his employment agreement, Mr. Kaplan’s base salary for calendar year 2004 would have been $100,000 with a target commission based bonus of $100,000 if Mr. Kaplan achieved 100% of his sales quota for 2004. In addition, Mr. Kaplan was granted an option to purchase 80,000 shares of common stock under the 1997 Plan at an exercise price per share of $1.50, the fair market value of the Company’s common stock on the date of grant, subject to the Company’s standard four-year vesting schedule described above. The employment agreement provided that in the event Mr. Kaplan is terminated by the Company without cause, as defined in the agreement, Mr. Kaplan would receive a continuation of his base salary for a period of three months following the date of termination, 25% of his commission based bonus, then in effect, and medical benefits for himself and his dependents for three months after the date of his termination or until the date he becomes eligible to receive medical benefits from another company or business entity, whichever is earlier. Mr. Kaplan resigned in February 2004 and the Company paid Mr. Kaplan $75,000 in severance.
EXHIBIT 3
FIRST VIRTUAL COMMUNICATIONS INC (FVCC)

3200 BRIDGE PARKWAY SUITE 202
REDWOOD CITY, CA 94065
650 801 6500

DEF 14A
DEF 14A
Filed on 04/30/2003 – Period: 06/13/2003
File Number 000-23305
First Virtual Communications, Inc.  
(Name of Registrant as Specified In its Charter)

Payment of Filing Fee (Check the appropriate box)

☐ No fee required. 
☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11. 

1. Title of each class of securities to which transaction applies: 

2. Aggregate number of securities to which transaction applies: 

3. Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined): 

4. Proposed maximum aggregate value of transaction: 

5. Total fee paid: 

☐ Fee paid previously with preliminary materials. 
☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing. 

6. Amount Previously Paid: 

7. Form, Schedule or Registration Statement No.: 

8. Filing Party: 

9. Date Filed:
## EXECUTIVE OFFICERS

The executive officers of the Company and their ages as of April 29, 2003 are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ralph K. Ungermann</td>
<td>61</td>
<td>Executive Chairman of the Board</td>
</tr>
<tr>
<td>Jonathan J. Morgan</td>
<td>49</td>
<td>President and Chief Executive Officer</td>
</tr>
<tr>
<td>Truman Cole</td>
<td>61</td>
<td>Vice President and Chief Financial Officer</td>
</tr>
<tr>
<td>Robert Romano</td>
<td>47</td>
<td>Vice President, Marketing</td>
</tr>
<tr>
<td>Frank Kaplan</td>
<td>48</td>
<td>Vice President, Worldwide Sales</td>
</tr>
<tr>
<td>David Bundy</td>
<td>44</td>
<td>Chief Technology Officer</td>
</tr>
<tr>
<td>Frederik Strecker</td>
<td>32</td>
<td>Vice President, Engineering</td>
</tr>
<tr>
<td>Julia Schloss</td>
<td>32</td>
<td>Vice President and General Counsel</td>
</tr>
</tbody>
</table>

Biographical information about Messrs. Ungermann and Morgan is set forth under Proposal 1 above.

Mr. Cole rejoined the Company as Chief Financial Officer in December 2002. Mr. Cole previously served as the Chief Financial Officer of the Company from July 1999 to October 2000. From October 2000 to December 2002, he was the Chief Financial Officer at Fitme.com, a software company. From November 1997 to July 1999, he was the Vice President and Chief Financial Officer at NetSchools Corporation, a privately held Silicon Valley firm specializing in technology solutions for K-12 schools. From February 1994 to May 1997, Mr. Cole served as Chief Financial Officer of Network Peripherals, a networking company. Mr. Cole holds a Bachelor of Science degree in Mathematics from the University of Michigan and a Master of Business Administration degree from Santa Clara University.

Mr. Romano commenced his employment with the Company as Executive Vice President, Strategic Alliances in October 2001. In January 2002, he became Vice President, Marketing of the Company. Prior to his employment with the Company, Mr. Romano served as President of VCON, Inc., a U.S. subsidiary of an Israeli–based video conferencing company, from August 1998 until July 2001. Prior to that, he served as Vice President and General Manager of VTEL Corporation, a video–conferencing technology company, from January 1995 until August 1998. Mr. Romano holds a Bachelor of Arts degree in Business Administration/Accounting from the University of Washington.

Mr. Kaplan commenced his employment with the Company as Vice President of Worldwide Sales in December 2002. Prior to his employment with the Company, Mr. Kaplan served as Vice President of Worldwide Sales of Matrix Net Systems from January 2001 until November 2002. From April 1999 until January 2001, Mr. Kaplan was the Vice President of Sales at TANTAU Software. He also held the position of Vice President of Sales and Marketing at Vtel Corporation from 1995 to 1999. Mr. Kaplan holds a Bachelor of Arts degree in Journalism from Ohio University and a Masters in Sports Administration degree from Ohio State University.

Mr. Bundy has served as Chief Technology Officer of the Company since July 1998 and as Vice President of Engineering of White Pine from January 1994 to July 1998. Mr. Bundy was the Vice President and Principal Engineer of White Pine (then known as Visual International, Inc.) from August 1993 to December 1993 and Vice President and Principal Engineer of Visual T.I., Inc. from September 1991 until it merged into Visual International, Inc. in August 1993. Mr. Bundy holds a Bachelors of Science degree in Engineering from John Hopkins University.

Mr. Strecker joined the Company in June 1999 as Director of Video Services and became the Company’s Vice President, Engineering in January 2003. Mr. Strecker has fifteen years of networking industry experience in the areas of video, IP, Ethernet, LAN, WAN, real–time systems, video and voice. Prior to joining the Company, Mr. Strecker worked at FORE Systems as Product Line Manager from January 1997 to May 1999 where he was responsible for setting the strategy of IP voice telephony and video applications for FORE.
EXECUTIVE COMPENSATION

Compensation of Directors

The Company does not currently provide cash compensation to directors for services in their capacity as a director, but does reimburse directors for certain expenses in connection with attendance at board and committee meetings. The Company may decide to compensate non-employee directors in the future.

All of the Company’s non-employee directors are entitled to receive non-discretionary annual stock option grants under the 1997 Non-Employee Directors’ Stock Option Plan (the “Directors’ Plan”). Under the Directors’ Plan, each non-employee director who is first elected to the Board after the adoption of the plan is automatically granted an option to purchase 40,000 shares of Common Stock. Each non-employee director is additionally granted an option to purchase 40,000 shares of Common Stock on each anniversary of the director’s original grant under the Directors’ Plan. In addition, each non-employee director serving on the Audit, Compensation or Nominating Committees of the Board, is granted an option under the Directors’ Plan to purchase 25,000 shares, 15,000 shares and 15,000 shares, respectively of Common Stock upon the director’s appointment to the committee and on each anniversary of such director’s original grant upon joining such committee, so long as the director is not then an employee of the Company, has continuously served on the committee during such time and is a member of the committee at the time of grant. Options granted under the Directors’ Plan are granted at the fair market value of the Common Stock on the date of grant. Options granted to non-employee directors under the Directors’ Plan currently have a ten-year term and become exercisable on a daily ratable basis over a one year period from the date of grant.

During the year ended December 31, 2002, pursuant to the terms of the Directors’ Plan, Messrs. Gaut, Harris, Morgan and Stettner were each granted 40,000 shares of common stock on the anniversary of their respective original option grant under the Directors’ Plan at an exercise price per share of $0.35, $0.42, $0.55, and $0.55, respectively, in each case, the fair market value on the date of grant. In addition, for his services on the Audit Committee of the Board of Directors, Mr. Gaut was granted an option to purchase 25,000 shares of common stock under the Directors’ Plan at an exercise price per share of $0.35. Mr. Harris was granted an option to purchase 40,000 shares of common stock under the Directors’ Plan at an exercise price per share of $0.79 for his services on the Audit and Compensation Committees of the Board of Directors. Mr. Morgan was granted an option to purchase 25,000 shares of common stock under the Directors’ Plan at an exercise price per share of $0.54 for his services on the Audit Committee of the Board of Directors prior to the commencement of his services as Chief Executive Officer of the Company on October 29, 2002. Mr. Stettner was granted an option to purchase 15,000 shares of common stock at an exercise price per share of $0.54 under the Directors’ Plan for his services on the Nominating Committee of the Board of Directors. In addition, Mr. Stettner was granted an option to purchase 25,000 shares of common stock at an exercise price per share of $0.33 under the Directors’ Plan upon replacing Mr. Morgan on the Audit Committee of the Board of Directors. All option grants to these directors were made at the fair market value of the Common Stock on the respective dates of grant.

In June 2002, pursuant to the terms of the Company’s 1997 Equity Incentive Plan (the “Incentive Plan”), Mr. Ungermann was granted an option to purchase 300,000 shares of Common Stock. These options were granted at an exercise price of $0.60 per share, the fair market value of the Common Stock on the date of grant and become exercisable at the rate of 12,500 shares per month over a two-year period from the date of grant. In November 2002, pursuant to the terms of the Incentive Plan, Mr. Morgan was granted two options to purchase an aggregate of 150,000 shares of Common Stock, each option at an exercise price of $0.39 per share, the fair market value of the Common Stock on the date of grant. The option for 50,000 shares becomes exercisable subject to the Company’s standard four year vesting schedule and the option for 100,000 shares becomes exercisable upon the earlier of November 14, 2003 if the Company achieves profitability for the three consecutive quarters in the first three quarters of fiscal year 2003, or October 29, 2004.
## Summary of Compensation

The following table shows for the fiscal years ended December 31, 2002, 2001 and 2000, compensation awarded or paid to, or earned by, the Company's Chief Executive Officer and its other four most highly compensated executive officers on December 31, 2002 and former executive officers who departed from the Company during fiscal year 2002 (the "Named Executive Officers"):

<table>
<thead>
<tr>
<th>Name and Principal Position</th>
<th>Year</th>
<th>Salary ($)</th>
<th>Bonus ($)</th>
<th>Other Annual Compensation ($)</th>
<th>Restricted Stock Awards ($)</th>
<th>Securities Underlying Options/SARs ($)</th>
<th>LTIP Payouts ($)</th>
<th>All Other Compensation ($) (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jonathan G. Morgan, President and Chief Executive Officer</td>
<td>2002</td>
<td>46,154</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>215,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Ralph Ungermann, Executive Chairman and Former President</td>
<td>2002</td>
<td>99,646</td>
<td>-</td>
<td>300,000</td>
<td>-</td>
<td>-</td>
<td>4,214</td>
<td>4,068</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>20,596</td>
<td>-</td>
<td>250,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td></td>
<td>2000</td>
<td>69,225</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Truman Cole, Chief Financial Officer(2)</td>
<td>2002</td>
<td>769</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
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<td>2000</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Robert Romano, Executive Vice President</td>
<td>2002</td>
<td>162,938</td>
<td>87,371</td>
<td>-</td>
<td>200,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>29,423</td>
<td>-</td>
<td>-</td>
<td>200,000</td>
<td>-</td>
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<td>-</td>
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<tr>
<td></td>
<td>2000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>David O. Bundy, Chief Technology Officer</td>
<td>2002</td>
<td>149,520</td>
<td>-</td>
<td>-</td>
<td>100,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td></td>
<td>2001</td>
<td>78,392</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>2000</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Julia Schloss, Vice President and General Counsel</td>
<td>2002</td>
<td>123,715</td>
<td>3,573</td>
<td>-</td>
<td>65,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Frederick Strecker, Vice President, Engineering</td>
<td>2002</td>
<td>199,801</td>
<td>2,768</td>
<td>-</td>
<td>90,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Frank Kaplan, Vice President of Worldwide Sales(4)</td>
<td>2002</td>
<td>3,462</td>
<td>-</td>
<td>-</td>
<td>400,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Killko Caballero, Former President and Chief Executive Officer(5)</td>
<td>2002</td>
<td>317,334</td>
<td>33,558</td>
<td>-</td>
<td>200,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>150,364</td>
<td>22,922</td>
<td>-</td>
<td>438,900</td>
<td>-</td>
<td>-</td>
<td>4,338</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Jeff Krampf, Former Vice President, Engineering</td>
<td>2002</td>
<td>119,616</td>
<td>-</td>
<td>-</td>
<td>100,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>62,593</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Tim Rogers, Former Vice President, Finance and Treasurer and Chief Financial Officer(6)</td>
<td>2002</td>
<td>218,856</td>
<td>-</td>
<td>-</td>
<td>300,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

(1) Represents insurance premiums paid by the Company with respect to group life and health insurance for the benefit of the Named Executive Officer.

(2) Mr. Ungermann served as President and Chief Executive Officer from July 2000 until June 19, 2001. Since 2002, Mr. Ungermann has served as Executive Chairman of the Board of Directors of the Company.

(3) Mr. Cole rejoined the Company as Chief Financial Officer in December 2002.

(4) Mr. Kaplan joined the Company as Vice President of Worldwide Sales in December 2002.
Mr. Caballero commenced his employment with the Company upon its merger with CUseeMe Networks on June 19, 2001. His services as an employee of the Company ended in October 2002.

Mr. Rogers’ services as an employee of the Company ended in December 2002.

STOCK OPTION GRANTS AND EXERCISES

The Company grants options to its executive officers under its 1997 Equity Incentive Plan (the “1997 Incentive Plan”). As of March 28, 2003, options to purchase a total of 3,271,256 shares were outstanding under the Incentive Plan and options to purchase 1,644,220 shares remained available for grant under the plan.

The following tables show for the fiscal year ended December 31, 2002, certain information regarding options granted to, exercised by, and held at year end by, the Named Executive Officers:

**OPTION/ SAR GRANTS IN LAST FISCAL YEAR**

<table>
<thead>
<tr>
<th>Name</th>
<th>Number of Securities Under-lying Options/SARs Granted(1)</th>
<th>% of Total Options/ SARs Granted to Employees in Fiscal Year(2)</th>
<th>Exercise Or Base Price ($/S/S(3))</th>
<th>Expiration Date</th>
<th>5%(5)</th>
<th>10%(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Morgan(5)</td>
<td>40,000</td>
<td>*</td>
<td>$0.55</td>
<td>6/18/12</td>
<td>$13,835</td>
<td>$35,062</td>
</tr>
<tr>
<td></td>
<td>25,000</td>
<td>*</td>
<td>$0.54</td>
<td>6/21/12</td>
<td>$ 8,490</td>
<td>$21,515</td>
</tr>
<tr>
<td></td>
<td>50,000</td>
<td>1%</td>
<td>$0.33</td>
<td>10/28/12</td>
<td>$10,576</td>
<td>$26,296</td>
</tr>
<tr>
<td></td>
<td>100,000</td>
<td>2%</td>
<td>$0.33</td>
<td>10/28/12</td>
<td>$20,753</td>
<td>$52,593</td>
</tr>
<tr>
<td></td>
<td>300,000</td>
<td>6%</td>
<td>$0.60</td>
<td>6/2/12</td>
<td>$108,458</td>
<td>$272,234</td>
</tr>
<tr>
<td>Mr. Ungermann</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Cole</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Romano</td>
<td>200,000</td>
<td>4%</td>
<td>$0.60</td>
<td>6/2/12</td>
<td>$ 75,467</td>
<td>$191,249</td>
</tr>
<tr>
<td>Mr. Bundy</td>
<td>100,000</td>
<td>2%</td>
<td>$0.75</td>
<td>3/12/12</td>
<td>$ 47,167</td>
<td>$119,530</td>
</tr>
<tr>
<td>Ms. Schloss</td>
<td>25,000</td>
<td>*</td>
<td>$0.75</td>
<td>3/12/12</td>
<td>$ 11,792</td>
<td>$29,883</td>
</tr>
<tr>
<td></td>
<td>40,000</td>
<td>*</td>
<td>$0.39</td>
<td>12/8/12</td>
<td>$ 8,507</td>
<td>$22,787</td>
</tr>
<tr>
<td>Mr. Strocker</td>
<td>90,000</td>
<td>2%</td>
<td>$0.75</td>
<td>3/12/12</td>
<td>$ 42,450</td>
<td>$107,577</td>
</tr>
<tr>
<td>Mr. Kaplan</td>
<td>400,000</td>
<td>8%</td>
<td>$0.27</td>
<td>12/18/12</td>
<td>$ 67,920</td>
<td>$172,124</td>
</tr>
<tr>
<td>Mr. Caballero</td>
<td>100,000</td>
<td>2%</td>
<td>$0.60</td>
<td>1/31/03</td>
<td>$ 37,733</td>
<td>$95,624</td>
</tr>
<tr>
<td></td>
<td>100,000</td>
<td>2%</td>
<td>$0.60</td>
<td>1/31/03</td>
<td>$ 36,152</td>
<td>$90,744</td>
</tr>
<tr>
<td></td>
<td>438,900</td>
<td>9%</td>
<td>$0.92</td>
<td>1/31/03</td>
<td>$254,492</td>
<td>$644,933</td>
</tr>
<tr>
<td>Mr. Krampf</td>
<td>100,000</td>
<td>2%</td>
<td>$0.75</td>
<td>4/10/03</td>
<td>$ 47,167</td>
<td>$119,530</td>
</tr>
<tr>
<td>Mr. Rogers</td>
<td>50,000</td>
<td>1%</td>
<td>$0.75</td>
<td>3/12/03</td>
<td>$ 23,583</td>
<td>$59,765</td>
</tr>
<tr>
<td></td>
<td>250,000</td>
<td>5%</td>
<td>$1.07</td>
<td>3/12/03</td>
<td>$168,171</td>
<td>$426,144</td>
</tr>
</tbody>
</table>

* Less than one percent.

(1) Generally, 12.5% of the options become exercisable six months after the grant date and approximately 2.38% each month thereafter for 42 months. The term of each option granted is generally the earlier of (i) ten years or (ii) 30 days after termination of the employment of the holder.

(2) Based on an aggregate of 4,960,500 options granted to employees, consultants and directors, including the Named Executive Officers, of the Company during the fiscal year ended December 31, 2002.

(3) The exercise price per share of each option is equal to the fair market value of the Common Stock on the Date of grant.

(4) The potential realizable value is calculated based on the term of the option at its time of grant. It is calculated by assuming that the stock price on the date of grant appreciates at the indicated annual rate,
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compounded annually for the entire term of the option, and that the option is exercised and sold on the last day of its term for the appreciated stock price. All calculations are based on rounding the number of years remaining on the term of the option to the nearest whole number. No gain to the option holder is possible unless the stock price increases over the option term. The 5% and 10% assumed rates of appreciation are derived from the rules of the SEC and do not represent the Company’s estimate or projection of its future Common Stock price.

(5) The option to purchase 100,000 shares of the Company’s Common Stock that was granted to Mr. Morgan in October 2002 has non-standard vesting: the option will vest in full upon the earlier of November 14, 2003 if the Company achieves profitability for the three consecutive quarters in the first three quarters of fiscal year 2003 or October 29, 2007.

**AGGREGATED OPTION/ SAR EXERCISES IN LAST FISCAL YEAR, AND FY-END OPTION/ SAR VALUES**

<table>
<thead>
<tr>
<th>Name</th>
<th>Shares Acquired on Exercise($)</th>
<th>Value Realized($)</th>
<th>Number of Securities Underlying Unexercised Options/SARs at December 31, 2002($)</th>
<th>Value of Unexercised In-the-Money Options/SARs at December 31, 2002($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Morgan</td>
<td>235,304</td>
<td>201,286</td>
<td>Exercisable 133,377 Unexercisable 101,927</td>
<td>Exercisable 133,377 Unexercisable 101,927</td>
</tr>
<tr>
<td>Mr. Caballero</td>
<td>359,375</td>
<td>0</td>
<td>Exercisable 359,375 Unexercisable 0</td>
<td>Exercisable 359,375 Unexercisable 0</td>
</tr>
<tr>
<td>Mr. Ungermann</td>
<td>265,037</td>
<td>334,963</td>
<td>Exercisable 265,037 Unexercisable 334,963</td>
<td>Exercisable 265,037 Unexercisable 334,963</td>
</tr>
<tr>
<td>Mr. Cole</td>
<td>82,333</td>
<td>316,667</td>
<td>Exercisable 82,333 Unexercisable 316,667</td>
<td>Exercisable 82,333 Unexercisable 316,667</td>
</tr>
<tr>
<td>Mr. Romano</td>
<td>156,663</td>
<td>210,566</td>
<td>Exercisable 156,663 Unexercisable 210,566</td>
<td>Exercisable 156,663 Unexercisable 210,566</td>
</tr>
<tr>
<td>Mr. Buntly</td>
<td>196,663</td>
<td>210,566</td>
<td>Exercisable 196,663 Unexercisable 210,566</td>
<td>Exercisable 196,663 Unexercisable 210,566</td>
</tr>
<tr>
<td>Ms. Schloss</td>
<td>22,788</td>
<td>77,212</td>
<td>Exercisable 22,788 Unexercisable 77,212</td>
<td>Exercisable 22,788 Unexercisable 77,212</td>
</tr>
<tr>
<td>Mr. Strecker</td>
<td>133,377</td>
<td>146,623</td>
<td>Exercisable 133,377 Unexercisable 146,623</td>
<td>Exercisable 133,377 Unexercisable 146,623</td>
</tr>
<tr>
<td>Mr. Krampf</td>
<td>189,139</td>
<td>210,566</td>
<td>Exercisable 189,139 Unexercisable 210,566</td>
<td>Exercisable 189,139 Unexercisable 210,566</td>
</tr>
<tr>
<td>Mr. Rogers</td>
<td>65,624</td>
<td>0</td>
<td>Exercisable 65,624 Unexercisable 0</td>
<td>Exercisable 65,624 Unexercisable 0</td>
</tr>
</tbody>
</table>

**EMPLOYMENT, SEVERANCE AND CHANGE OF CONTROL AGREEMENTS**

On October 29, 2002, the Company and Mr. Morgan entered into an employment agreement pursuant to which Mr. Morgan became the Acting President and Chief Executive Officer. Pursuant to the employment agreement, the Company agreed to pay Mr. Morgan a base salary of $300,000 per year. In addition, Mr. Morgan was granted options to purchase 150,000 shares of common stock under the 1997 Incentive Plan at an exercise price per share of $0.35, the fair market value of the Company’s Common Stock on the date of grant, 50,000 shares of which are subject to the Company’s standard vesting schedule and 100,000 shares of which still vest in full upon the earlier of November 14, 2003 if the Company achieves profitability for the three consecutive quarters in the first three quarters of fiscal year 2003, or October 29, 2007.

On December 12, 2002, the Company and Mr. Kaplan entered into an agreement pursuant to which Mr. Kaplan became Vice President of World Wide Sales. Pursuant to the agreement, the Company has agreed to pay Mr. Kaplan a base salary of $180,000 per year through December 31, 2003 and a target commission based bonus for calendar year 2003 of $150,000 if Mr. Kaplan achieves 100% of his sales quota for 2003. Pursuant to his employment agreement, Mr. Kaplan’s base salary for calendar year 2004 will be $150,000 with a target commission based bonus of $150,000 if Mr. Kaplan achieves 100% of his sales quota for 2004. In addition, Mr. Kaplan was granted an option to purchase 400,000 shares of common stock under the 1997 Incentive Plan at an exercise price per share of $0.30, the fair market value of the Company’s Common Stock on the date of grant, subject to a vesting as follows, twelve and one-half percent of the shares vest on June 30, 2003, and the remaining shares vest in equal installments at the end of each monthly period thereafter until all the shares are fully vested. The employment agreement provides that in the event
EXHIBIT 4
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 earliest event reported): November 13, 2004

FIRST VIRTUAL COMMUNICATIONS, INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

000–23305
(Commission File No.)

77–0357037
(I.R.S. Employer Identification No.)

3200 Bridge Parkway, Suite 202
Redwood City, California 94065
(Address of principal executive offices) (Zip code)

(650) 801–6500
(Registrant’s telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box 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 5.02 DEPARTURE OF DIRECTORS OR PRINCIPAL OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF PRINCIPAL OFFICERS
SIGNATURES
Resignation of Chief Financial Officer and Corporate Controller

Effective November 14, 2004, Truman Cole resigned as our Vice President and Chief Financial Officer. Mr. Cole was our principal financial officer and our principal accounting officer. Effective November 13, 2004, Andrew Morrison resigned as our Corporate Controller. While having resigned, Messrs. Cole and Morrison have offered to assist us as consultants through a transition period. We have not yet named any individuals to fill the roles previously held by Messrs. Cole and Morrison, and we do not know when we will be able to name a principal financial officer or a principal accounting officer.

Cautionary Statement:

In addition to the historical information contained in this Current Report, this Current Report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that involve risks and uncertainties.

These forward-looking statements include, without limitation, statements containing the words “believes,” “anticipates,” “expects,” “intends” and words of similar import. Such forward-looking statements will have known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.

Such factors include, among others: any adverse impact on us from the resignation of our Chief Financial Officer and Corporate Controller; our ability to hire a new Chief Financial Officer and a new Corporate Controller; and other risk factors set forth in our Annual Report on Form 10-K for the year ended December 31, 2003 and in our other public filings with the SEC.

We assume no obligation to update any forward-looking statements contained herein. Our expectations and the events, conditions and circumstances on which these forward-looking statements are based may change.
Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: November 18, 2004

FIRST VIRTUAL COMMUNICATIONS, INC.

By: /s/ Jonathan Morgan
Jonathan Morgan
Chief Executive Officer
EXHIBIT 5
FIRST VIRTUAL COMMUNICATIONS, INC.
(Exact name of Registrant as specified in its charter)

Delaware 000–23305 77–0357037
(State or other (Commission File (I.R.S. Employer
jurisdiction of No.) Identification No.)
incorporation or organization)

3200 Bridge Parkway, Suite 202
Redwood City, California 94065
(Address of principal executive offices) (Zip code)

(650) 801–6500
(Registrant’s telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box 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))
Audit Committee Investigation; Restatement of Financial Results

Overview

In April 2004, we announced that the audit committee of our board of directors had initiated a special investigation as a result of the identification by management of several irregular sales transactions, most of which occurred in our Asia operations. The audit committee retained a special independent legal counsel and through them, independent forensic accountants, to review these transactions. As a result of the pendency of this investigation, we were unable to complete our quarterly financial statements for the quarters ended March 31, 2004, June 30, 2004 and September 30, 2004, and thus we were unable to release our results and timely file with the SEC our quarterly reports for the first, second and third quarters of 2004.

The special investigation is now complete. The audit committee determined that there were sales transactions, mostly in our Asia operations, that included irregular, undisclosed terms and that this resulted in accounting errors. The audit committee has determined that these errors, standing alone, would not have required a restatement of previously issued financial statements due to their immateriality for reporting purposes. In addition, the audit committee also identified certain sales transactions unrelated to our Asia operations that were not appropriately accounted for by us, including primarily transactions with one U.S. customer where revenue was recognized prematurely for certain sales transactions. The audit committee determined on November 15, 2004 that, as a result of the errors involving this one U.S. customer, it will be necessary to restate our financial results for the years ended December 31, 2001, 2002 and 2003. In connection with the restatement of our financial results for each of these years, the interim financial results for the quarters ended March 31, June 30, September 30 and December 31 of each of these years will be restated. Accordingly, the existing financial statements for these periods should no longer be relied upon. Furthermore, the audit committee has determined that while we will not be issuing full restated financial results for the year ended December 31, 2000, there will be revisions to those financial statements which will impact the restatement for the year ended December 31, 2001 and related interim periods. The audit committee has discussed with our independent auditors the conclusions of the audit committee discussed in this report.

It is our objective to amend our Form 10-K for the fiscal year ended December 31, 2003 as soon as practicable to reflect the restatements. While we believe for the reasons described above that a restatement of our financial statements is necessary for our 2001, 2002 and 2003 fiscal years, there can be no assurance that we will be able to complete the restatement or to file an amended Form 10-K for the fiscal year ended December 31, 2003 for the reasons set forth in the following paragraph.

The filing of the amended Form 10-K for the fiscal year ended December 31, 2003 and the filing of our quarterly reports for the first, second and third quarters of 2004 require that we have enough resources to maintain our operations until the restatement is completed. In addition, in order to file the amended Form 10-K, our independent auditors require representations for the periods being restated and the SEC regulations require certifications of the financial results that will be included in the amended Form 10-K, with those representations and certifications to be provided by our chief executive officer, principal financial officer and principal accounting officer. We will need to provide similar representations to our independent auditors before we can complete the quarterly reports. Due to our difficult financial situation discussed below and the additional work remaining to complete the restatement and to finalize the unaudited results for the interim quarters of the fiscal year ending December 31, 2004, and as a result of the recent resignations of our Chief Financial Officer and Corporate Controller announced in a separate Form 8-K filed November 18, 2004, the timing of the filing of the amended Form 10-K and the quarterly reports is uncertain.

Results of Audit Committee Investigation

The audit committee determined that revenues related to contracts with one of our U.S. customers were prematurely recognized in a quarter preceding the quarter in which the transactions should have been recognized under applicable revenue recognition rules. American Institute of Certified Public Accountants' Statement of Position 97-2 (SOP 97-2), "Software Revenue Recognition" and Securities and Exchange Commission Staff Accounting Bulletin 104 (SAB 104), "Revenue Recognition." Under SOP 97-2 and SAB 104, a requirement for revenue recognition is the occurrence of acceptance or expiration of the acceptance period when acceptance criteria are specified. The audit committee's investigation revealed that the acceptance requirement was not met in the quarters in which revenue was recognized for certain transactions relating to purchases of products by the U.S. customer. The audit committee found no evidence to suggest that the revenues and cash flows associated with the U.S. customer's contracts were not genuine. The U.S. customer's contracts were valid, products were delivered, and we received cash. We performed an analysis of the extent and quantification of the prematurely recognized revenue, which forms the basis of the need to restate our financial results for the 2001, 2002 and 2003 fiscal years. Included in the analysis are adjustments made as a result of the irregularities and errors involving the Asia and other operations and additional errors noted during the course of the investigation. While these additional errors and the errors involving the Asia and other operations were not individually material for reporting purposes and would not have required a restatement of previously
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issued financial statements, they are being corrected as part of the restatement resulting from the adjustments related to the acceptance provisions with this one U.S. customer.

For purposes of the restatement, the revenue improperly recognized in a particular quarter will be deferred and recognized in the quarter in which acceptance requirements were satisfied. For example, if a product sale having a value of $100 was prematurely recognized in one quarter, the $100 will be deferred from the revenue in that quarter and then recognized in a later quarter in which customer acceptance requirements were satisfied. In addition to revenue shifting between periods, there will be a resultant impact on cost of goods sold and operating expenses. The effects on income taxes, net loss, earnings/loss per share, total assets, total liabilities, working capital and stockholders’ equity will also be taken into account in the restatement.

Restatement of Financial Results (unaudited)

As a result of the audit committee's investigation into our revenue recognition practices, the audit committee has determined that we should restate our financial results for the years ended December 31, 2001, 2002 and 2003. In connection with the restatement of our financial results for each of these years, the interim financial results for the quarters ended March 31, June 30, September 30 and December 31 of each of these years will be revised. Our preliminary estimates are that the net effect on our revenues was a decrease in the range of $0.17 million to $0.25 million, an increase in the range of $1.04 million to $1.28 million, and a decrease in the range of $0.11 million to $0.18 million in the fiscal years ended December 31, 2001, 2002 and 2003, respectively. For each of these years, the estimated dollar and percentage effect on revenues for each quarterly period is stated below. No audit has yet been conducted on restated financial results. The completion of the restatement and the audit may result in adjustments beyond the ranges estimated in this Form 8-K.

Fiscal Year 2001

The effect on revenues for the first quarter of the 2001 fiscal year was an increase in the range of $1.1 million to $1.3 million, or 25.1% to 29.7%. The effect on revenues for the second quarter of the 2001 fiscal year was a decrease in the range of $0.1 million to $0.12 million, or 1.2% to 1.5%. The effect on revenues for the third quarter of the 2001 fiscal year was a decrease in the range of $0.02 million to $0.03 million or 0.3% to 0.4%. The effect on revenues for the fourth quarter of the 2001 fiscal year was a decrease in the range of $1.15 million to $1.4 million, or 15.6% to 19.0%. As a percentage, the effect on revenues for the 2001 fiscal year was a decrease in the range of 0.6% to 0.9%.

Fiscal Year 2002

The effect on revenues for the first quarter of the 2002 fiscal year was an increase in the range of $1.15 million to $1.40 million, or 17.4% to 21.2%. The effect on revenues for the second quarter of the 2002 fiscal year was a decrease in the range of $0.2 million to $0.24 million, or 3.0% to 3.6%. The effect on revenues for the third quarter of the 2002 fiscal year was a decrease in the range of $0.08 million to $0.09 million, or 1.3% to 1.5%. The effect on revenues for the fourth quarter of the 2002 fiscal year was an increase in the range of $0.17 million to $0.21 million, or 3.4% to 4.2%. As a percentage, the effect on revenues for the 2002 fiscal year was an increase in the range of 4.3% to 5.2%.

Fiscal Year 2003

The effect on revenues for the first quarter of the 2003 fiscal year was a decrease in the range of $0.03 million to $0.05 million, or 0.6% to 0.9%. The effect on revenues for the second quarter of the 2003 fiscal year was a decrease in the range of $0.3 million to $0.4 million, or 5.1% to 6.5%. The effect on revenues for the third quarter of the 2003 fiscal year was an increase in the range of $0.28 million to $0.35 million, or 5.2% to 6.5%. The effect on revenues for the fourth quarter of the 2003 fiscal year was a decrease in the range of $0.06 million to $0.08 million, or 1.3% to 1.7%. As a percentage, the effect on revenues for the 2003 fiscal year was a decrease in the range of 0.5% to 0.8%.

Current Liquidity and Financial Condition (unaudited)

The information provided below relating to our current financial status is for informational purposes and is not being provided as part of a statement of results of operations, a balance sheet, or a statement of cash flows prepared in accordance with U.S. Generally Accepted Accounting Principles.

On September 30, 2004, we had cash and cash equivalents of approximately $2.4 million. During October 2004, we used an additional $1.0 million to fund operations and we expect to continue to use cash to fund our operating activities for the foreseeable future. Accordingly, cash resources available for operations as of October 31, 2004 were approximately $1.4 million. In addition, as of October 31, 2004, we had other current assets of approximately $3.1 million. As of that same date, we had existing current obligations of approximately $12.1 million, of which approximately $4.2 million were secured by our cash deposits and substantially all of our assets.
We have operated at a loss since our inception and have financed our operations primarily through private and public placements of equity securities, revenue from the sale of our products and services and through credit facilities. We expect continued operating losses for the remainder of 2004 and 2005. As a result, absent an infusion of new capital, we are likely to run out of cash resources within the next 20–60 days. Additionally, as a result of the special investigation, our customers have questioned our financial viability, resulting, we believe, in reduced product sales. In addition, as a result of the restatement of our financial results, our customers may continue to question our financial viability and to also question our integrity, which could materially adversely affect our business, financial condition and results of operations. We cannot determine the extent to which our revenue may be adversely impacted by the results of the special investigation and the restatement of our financial results.

We have recently become the subject of U.S. federal class-action securities litigation related to the decline in the value of our common stock. The complaints allege that we, along with certain of our executive officers, violated securities laws by artificially inflating our stock price through materially misleading statements and omissions to the public and by otherwise engaging in fraud against the plaintiffs. Each of the named executive officers is party to an indemnification agreement with us in which, subject to certain exclusions and limitations, we have agreed to advance all expenses necessary for the defense of such lawsuits and to reimburse them for any damages they are required to pay. The complaints seek unspecified compensatory damages, as well as costs and expenses of plaintiffs’ attorneys in bringing the action against us. If we were unsuccessful in litigating this complaint, we could be subject to substantial damages. Additionally, even if we are successful in defending these actions, securities class actions can be expensive and time-consuming to litigate and we might incur substantial legal costs in defending the matter. Although we believe our directors’ and officers’ liability insurance provides coverage for legal costs as well as any damages incurred in this litigation, the coverage would be subject to a deductible of up to $500,000, which would be our obligation. Furthermore, the existence of these lawsuits may deter potential investors from investing in our securities, substantially impair the valuation we receive in any financing or sale of our business, and/or substantially delay the timing with which we can consummate a financing or sale of our business.

Forbearance by Silicon Valley Bank

We became party to a $3 million secured credit facility with Silicon Valley Bank pursuant to a Loan and Security Agreement dated as of April 3, 2003, as amended by an Amendment to Loan Documents dated as of May 25, 2004 (as amended, the “Loan Agreement”). As of October 31, 2004, $2.5 million of our secured obligations were subject to this credit facility with the bank. In addition, the Loan Agreement contains financial and non-financial covenants, including a monthly liquidity covenant which we have already violated as of August 31, 2004.

On September 13, 2004, we entered into a Temporary Forbearance Agreement with Silicon Valley Bank pursuant to which the bank agreed to forbear from exercising (but not to waive) its rights and remedies against us as a result of our default under the Loan Agreement until September 21, 2004.

On September 29, 2004, we entered into an Extension Agreement with Silicon Valley Bank, effective as of September 13, 2004, in which the date of expiration of the Temporary Forbearance Agreement was extended through October 4, 2004. Since that time, we have continued to have discussions with the bank regarding our financial situation.

On November 16, 2004, Silicon Valley Bank signed an Amendment and Extension Agreement with us, in which the date of expiration of the Temporary Forbearance Agreement was extended through November 15, 2004, the maximum amount of the credit facility pursuant to the Loan Agreement was reduced from $3 million to $2.5 million, and we agreed that the Loan Agreement would be amended to require us to direct all of our customers to remit payments to a cash collateral account controlled by the bank. We also agreed to provide additional weekly financial reporting to the bank.

In consideration of this forbearance, we agreed to pay a $100,000 fee to the bank on the earlier to occur of (i) the receipt by us of proceeds for the issuance of equity securities, (ii) the acceleration of the credit facility, or (iii) the maturity date of the loan. We also agreed to pay a success fee to the bank of the lesser of an additional $100,000 or 1% of our gross valuation on the earlier to occur of the closing of any change in control or equivalent transaction or the maturity date of the loan. In addition, we agreed to reprice an existing warrant held by the bank to purchase 7,218 of our shares of common stock at $2.54 per share to a price of $0.01 per share.

We remain in negotiations with the bank regarding a restructuring of our credit facility that would include within it a waiver of our existing covenant violations. Nevertheless, we cannot assure you that we will be successful in negotiating a restructuring and therefore that we will receive a waiver of our existing covenant violations. In addition, the bank has not agreed to any subsequent forbearance after November 15, 2004. If the bank were to declare the loan in default based on our past violations or any future violation, it would be able to seize the cash in our deposit accounts and this would eliminate our ability to operate. We cannot assure you that the bank will enter into any new forbearance period, or that it will not declare a default at this time or after the expiration of any new forbearance period.
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Bankruptcy Risk; Dilution Risk

If we are unable to consummate a financing or a sale transaction in the next 20–60 days or to maintain our relationship with Silicon Valley Bank, we may have no choice but to file for relief from our creditors under Chapter 11 or 7 of the United States Bankruptcy Code. Moreover, because of the magnitude of our existing and contingent liabilities, even if we are able to find investors willing to purchase our securities or our business, we may be compelled to file for bankruptcy protection in order to consummate such a transaction on a timely basis.

Even if we complete a financing and avoid bankruptcy, any such financing will be highly dilutive to our existing stockholders.

Cautionary Statement:

In addition to the historical information contained in this Current Report, this Current Report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that involve risks and uncertainties.

These forward looking statements include, without limitation, statements containing the words “believes,” “anticipates,” “expects,” “intends” and words of similar import. Such forward-looking statements will have known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.

Such factors include, among others: our need to raise additional capital on a timely basis to fund our operating requirements; any adverse impact on us from the resignation of our Chief Financial Officer and Corporate Controller; our ability to hire a new Chief Financial Officer and a new Corporate Controller; any adverse impact on us from the risk of a bankruptcy filing, including the risk that vendors will refuse to do business with us; any adverse impact on us from the special investigation and restatement of previously announced financial results; any adverse impact arising from the delay in filing required periodic reports; any impact of our inability to raise additional operating funds on favorable terms, or at all; our ability to enter into a financing or sale transaction; whether Silicon Valley Bank continues to forbear in exercising any of its remedies under the Loan Agreement; whether Silicon Valley Bank agrees to waive any violations of the covenants contained in the Loan Agreement, as amended; the volatility of our stock price; our potential inability to maintain business relationships with our integrators, distributors and suppliers; and other risk factors set forth in our Annual Report on Form 10-K for the year ended December 31, 2003 and in our other public filings with the SEC.

We assume no obligation to update any forward-looking statements contained herein. Our expectations and the events, conditions and circumstances on which these forward-looking statements are based may change.
Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: November 19, 2004

FIRST VIRTUAL COMMUNICATIONS, INC.

By: /s/ Jonathan Morgan
    Jonathan Morgan
    Chief Executive Officer