

NEOMEDIA TECHNOLOGIES INC

Form 10-K

March 28, 2008

**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, 2007

Commission File Number 0-21743

**NeoMedia Technologies, Inc.
(Exact name of registrant as specified in its charter)**

Delaware
(State or other jurisdiction of
incorporation or organization)

36-3680347
(I.R.S. Employer
Identification No.)

Two Concourse Parkway, Suite 500, Atlanta, GA 30328
(Address, including zip code, of principal executive offices)

678-638-0460
(Registrants' telephone number, including area code)

Securities Registered Under Section 12(b) of the Exchange Act:

Common Stock, par value \$.01 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes No

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 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 registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated

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filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Aggregate market value of the voting stock held by non-affiliates of the registrant as of June 30, 2007 based upon the closing price was approximately \$31 million.

The number of outstanding shares of the registrant’s Common Stock on February 29, 2008 was 1,035,584,313.

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PART I

ITEM 1.

Business

Statements contained in this Form 10-K that are not purely historical are forward-looking statements and are being provided in reliance upon the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. Words such as “anticipates,” “expects,” “intends,” “plans,” “believes,” “seeks,” “estimates,” or similar expressions identify forward-looking statements. These forward-looking statements include but are not limited to statements regarding NeoMedia’s expectations of our future liquidity needs, our expectations regarding our future operating results including our planned increase in our revenue levels and the actions we expect to take in order to maintain our existing customers and expand our operations and customer base. All forward-looking statements are made as of the date hereof and are based on current management expectations and information available to us as of such date. We assume no obligation to update any forward-looking statement. It is important to note that actual results could differ materially from historical results or those contemplated in the forward-looking statements. Forward-looking statements involve a number of risks and uncertainties, and include risks associated with our target markets and risks pertaining to competition, other trend information and our ability to successfully enhance our operations. Factors that could cause actual results to differ materially include, but are not limited to, those identified in “Item 1A-Risk Factors” and in other of our filings with the Securities and Exchange Commission. All references to “NeoMedia” or the “Company” in this Annual Report on Form 10-K mean NeoMedia Technologies, Inc., a Delaware corporation, and all entities owned or controlled by NeoMedia Technologies, Inc., except where it is made clear that the term only means the parent company. All tabular amounts are stated in thousands.

Overview

NeoMedia (www.neom.com) provides internet advertising solutions using wireless technologies to connect traditional print and broadcast media companies to active mobile content. We accomplish this by turning “old-media” into “new-media.” Using camera-enabled mobile phones, barcode-reading software (NeoReader™), and an interoperable billing, clearing and settlement infrastructure (NeoServer-OMS/OMI), we embrace open standards, full interoperability, and are barcode symbology agnostic.

Our mobile phone technology, NeoReader™, reads and transmits data from 1-D, and 2-D barcodes to its intended destination. Our Optical Messaging and Interchange platforms (OMS and OMI) create, connect, record, and transmit the transactions embedded in the 1-D and 2-D barcodes, like web-URLs, text messages (SMS), and telephone calls, ubiquitously and reliably. We provide the industrial and carrier-grade infrastructure to enable reliable, scalable, and billable commerce. To provide a robust high-performance infrastructure for the processing of optical codes, we extend our offering with the award winning Gavitec technology. Gavitec’s Mobile Ticketing and Couponing solutions allow users to enter information and opt-in to initiate mobile transactions.

Our revenue is primarily derived from two sources: 1) license revenue relating to patents and internally-developed software and 2) hardware, software and service revenue related to mobile marketing campaign design and implementation.

In February 2007, we added George G. O’Leary to our Board of Directors. In June 2007 we hired William J. Hoffman as Chief Executive Officer and appointed him to our Board of Directors. Mr. Hoffman serves as our Chairman following the resignation of Charles W. Fritz, the founder and former Chairman of the Board.

In September 2007, we announced plans to relocate our corporate headquarters. We completed our relocation to Atlanta as of December 1, 2007 in order to offer close contact to potential customers and easier access to international markets. We will continue to operate our Aachen, Germany office, where our Gavitec operations are based. Also in

September 2007, we announced that Dr. Christian Steinborn, CEO of Gavitec, assumed the additional role of Chief Operating Officer of NeoMedia.

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Our common stock is currently listed on the Over-the-Counter Bulletin Board under the symbol “NEOM”. Our principal executive offices are located at Two Concourse Parkway, Suite 500, Atlanta, Georgia 30328. Our telephone number is (678) 638-0460 and our website is located at www.neom.com. Through this website, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports are available free of charge as soon as reasonably practicable after they are filed with the U.S. Securities and Exchange Commission. The information contained on our website is not included in, or incorporated by reference into, this Annual Report on Form 10-K.

During January 2007, we made the strategic decision with respect to our corporate structure to shed our remaining non-core business units in order to focus our efforts on the area that our management believes will deliver the most value, our code-reading business and the related intellectual property. We had previously divested of our Sponge and Mobot business units during the fourth quarter of 2006, and following the strategic decisions made in January 2007, we sold the 12Snap business unit in April 2007, and we completed the sale of our Telecom Services business unit in October 2007. In August 2006, we had announced our intent to sell our Micro Paint Repair business unit, and that sale was completed in November 2007. As a consequence of the planned and completed divestitures, we evaluated our business as one consolidated business for the entire 2007 reporting year. These divestitures were integral to our turnaround plan and have allowed us to invest in our principal line of business – our code-reading business and the related intellectual property.

The following business discussion will focus on our structure in 2007 with our code-reading business, including Gavitec, and the related intellectual property. As of December 31, 2007 we had two (2) active wholly-owned subsidiaries: Gavitec AG, incorporated in Germany, and NeoMedia Migration, Inc., incorporated in Delaware. In addition, there are several dormant subsidiaries which are listed in Exhibit 21.1.

Divestitures and Impairments

For each of the divestitures listed below, we have analyzed the applicable accounting literature found in the SEC Staff Accounting Bulletin (SAB) Topic 5E, Accounting Principles Board (APB) Opinion 29, APB 18, Statement of Financial Accounting Standards (FAS) 141, FAS 144, and Emerging Issues Task Force (EITF) Issue 01-2, and determined that the criteria for reporting the disposal of the businesses and reporting of discontinued operations have been met.

Micro Paint Repair Business Unit – On November 15, 2007, we completed the sale of Micro Paint Repair, excluding the assets of the Micro Paint Repair-US operations (which operated under the brand name “AutoXperience”). On November 30, 2007, we shut down the operations of AutoXperience.

Telecom Services Business – On October 30, 2007, we completed the sale of Telecom Services.

12Snap Business – On April 4, 2007, we completed the sale of 12Snap.

Mobot Business – On December 6, 2006 we completed the sale of Mobot.

Sponge Business – On November 14, 2006, we completed the sale of Sponge.

Products and Services

We provide a complete suite of software and hardware for reading and scanning 1-D and 2-D barcodes in the mobile environment, and enabling amazing applications in mobile marketing, mobile couponing, mobile ticketing and mobile payment.

- NeoReader™ – code scanning software that transforms your mobile phone into a universal 2D code scanner and provides one-click access to mobile content. The NeoReader™ allows users to scan 2-D or 1-D barcodes from enabled product packages, ad campaigns, retail displays, publications, or any variety of medium. Mobile users are able to link directly to a specific web page, access services, retrieve real-time information, or place orders by bypassing long URLs, search engines, and avoiding cumbersome menus. NeoReader™ features our patented resolution technology with Gavitec’s ultra-small footprint and platform-independent algorithms. This scanner provides interoperability among 2-D codes in the market and operates on a variety of handsets.
- EXIO® – an advanced and complete solution including printer, display, keypad and GSM/GPRS module. EXIO® reads and processes 2-D symbologies such as Data Matrix from mobile phone displays as well as printed 1-D barcodes. Utilizing a high-speed Digital Signal Processor (DSP) and a high-resolution camera, EXIO® automatically recognizes 2-D codes such as Data Matrix, sent as MMS (Multimedia Message Service), EMS (Enhanced Message Service) or Picture Message (Smart Message) to any compatible mobile phone.
- MD-20 – is a high-performance OEM code reader providing unparalleled flexibility in scanning 2-D symbologies such as Data Matrix from mobile phone displays as well as printed 1-D barcodes. Because of its compact size, speed and flexibility, MD-20 is the ideal high-performance fixed-position 2-D code reader for a wide range of applications where mobile code reading, mobile couponing, mobile ticketing and mobile marketing are required, thus enabling the phone to be used as the single universal mobile device.
- Lavasphere – comprising low-footprint algorithms, the Lavasphere technology enables mobile devices with integrated cameras to read Data Matrix codes and a variety of other 2-D symbologies as well as 1-D barcodes. Designed to be embedded directly into mobile devices, the Lavasphere technology is primarily targeted at mobile phone manufacturers and vendors ambitious to add extra value to their camera-enabled mobile devices and therefore boost their usability.
 - Link Manager – is a web-based tool for creating and linking codes and keywords that act as the resolution service for its codes. The program allows users to link commercial codes (UPC, EAN, and ISBN), keywords (words, phrases, brand names, etc.) and also supports custom codes. The manager program offers a customizable feature that uses rules to deliver content based on preferences including language, gender, age, and location. Link Manager offers robust logging and reporting that allows users to receive results on code usage, handsets usage, and frequency.
- Gavitec MSS – Gavitec’s “Modular Solution Server” provides a full range of services from concept development, product design, customized hardware and software components, to support, consulting and implementation. MSS is a completely stand-alone system supporting 3rd party ticketing/couponing systems and databases as well as adding all missing components to existing mobile systems essential for the successful completion and fulfillment of mobile applications. Based on our customers’ needs and requirements, we believe that we provide the best solution –
 - o Integrating 3rd party ticketing and couponing systems,
 - o Providing marketing database and our own coupon system,
 - o Encrypting and sending codes to mobile phones,
 - o Decrypting and analyzing code contents,
 - o Enabling customer’s own coupon and ticket configuration,
 - o Supplying statistics and information on mobile activities, and

o Implementing and delivering customized hard and software solutions.

·MaxiCode Encoder – our MaxiCode Encoder creates symbols in the print stream of choice, ranging from PC to midrange and mainframe platforms. MaxiCode is a 2-D symbology which can encode about 100 characters of data in an area of one square inch. One of MaxiCode's key features is that it can be located and read at high speeds in a large field of view. Because of these unique features, it has been adopted as the standard symbology for high-speed sorting by UPS.

·PDF417 – our Portable Data File 417 (PDF417) Encoder creates bar code print streams for desktop, mid-range and mainframe platforms. PDF417 is a high-capacity 2-D barcode capable of storing any binary or textual information. Industry applications for PDF417 include driver's licenses, ID cards, EDI, insurance cards and any other situation in which a large amount of machine-readable data must be printed in a small area.

·WISP – Wang Interchange Source Processor (WISP) is an integrated set of utilities that facilitates the complete migration of Wang VS COBOL applications to the open systems and internet-ready world of UNIX or Windows NT. WISP provides the added flexibility of maintaining source files on the Wang VS system and migrating them to the target system as needed.

Sales, Marketing and Distribution Relationships

We have worked to establish a global network of direct salespeople, affiliates and business development personnel to market, upsell and cross-sell our suite of products and services. Our target markets cross a number of geographic regions including: the U.S., the U.K., Western Europe, the Middle East and Asia/Pacific.

Data Centers

As of December 31, 2007, we do not own any data centers. We have servers located in a data center in Miami where our network infrastructure is supported by an outside vendor.

Proprietary Technology

Many of the products we sell to our customers rely on hardware and software technologies provided to us by third parties under license. Certain of our products and services combine these third party technologies with technologies that are proprietary to us. Our proprietary technology may be protected by patent law, copyright law, trade secret law and other forms of intellectual property protection. Our proprietary technology includes technologies that enable us to automate a number of back-end functions and technologies that allow customers to order, change and manage their accounts easily without technical expertise. Some of our proprietary technologies are unique and may not legally be utilized by competitors without a license from us. Although we believe that our suite of proprietary technologies offers customers significant benefits, we do not believe that our proprietary technologies are sufficient to deter competitors from providing competing products and services.

International Revenue

Our international revenues totaled \$1.3 million and \$0.9 million for the years ended December 31, 2007 and 2006, respectively. International revenues are denominated and paid primarily in Euros and represent revenues from international customers generated and supported in Germany, where our Gavitec business unit is located.

Competition

We believe we have positioned ourselves to compete as a global leader in mobile marketing solutions. However, within the mobile marketing industry there are a number of competitors, many of which are just beginning to appear, who offer parts of the mobile marketing equation. In general, due to the relative immaturity of the mobile marketing industry, small players have sprung up offering very specialized products and services.

As the mobile marketing industry matures, we expect consolidation as industry leaders emerge. Moreover, we believe we are well positioned at the onset due to our intellectual property, including many patents, on which our products and services are based. We expect that our intellectual property will serve as a competitive advantage as this market matures.

Intellectual Property

We rely on a combination of laws (including patent, copyright, trademark, service mark and trade secret laws) and contractual restrictions to establish and protect proprietary rights in our services. As of December 31, 2007, we owned sixteen (16) issued U.S. patents and fourteen (14) patents issued by foreign governments. Our patents cover core concepts behind our techniques for linking the physical world to the electronic world. These patents cover various linkage methods including barcodes, RF/ID, Mag Stripe, Voice and other machine readable and keyed entry identifiers.

We have licensed our patents to, or settled patent-related lawsuits with Digital:Convergence, A.T. Cross Company, Symbol Technologies, Brandkey Systems Corporation, Virgin Entertainment Group, and AirClic, Inc. We are in discussions with other companies with regard to the licensing of our patents. However, there can be no guarantee that any of these discussions will result in future revenues.

We have ongoing relationships with several law firms specializing in intellectual property licensing and litigation. These firms assist us in seeking out potential licensees of our intellectual property portfolio, including any resulting litigation.

We have entered into confidentiality and other agreements with our employees and contractors, including agreements in which the employees and contractors assign their rights in inventions to us. We have also entered into nondisclosure agreements with our suppliers, distributors and some customers in order to limit access to and disclosure of our proprietary information. Nonetheless, neither the intellectual property laws nor contractual arrangements, nor any of the other steps we have taken to protect our intellectual property can ensure that others will not use our technology, or that others will not develop similar technologies.

We license, or lease from others, many technologies used in our services. We expect that we and our customers could be subject to third-party infringement claims as the number of competitors grows. Although we do not believe that our technologies or services infringe the proprietary rights of any third parties, we cannot ensure that third parties will not assert claims against us in the future or that these claims will not be successful.

Periodically, we may be made aware that technology we have used in our operations may have infringed intellectual property rights held by others. We will evaluate all such claims and, if necessary and appropriate, seek to obtain licenses for the use of such technology. If we or our suppliers are unable to obtain licenses necessary to use intellectual property in our operations, we may be legally liable to the owner of such intellectual property. Moreover, even in those instances where we are justified in denying claims that we have infringed on the intellectual property rights of others, we may nonetheless be forced to defend or settle legal actions taken against us relating to allegedly protected technology, and such legal actions may require us to expend substantial funds. See “Item 1A Risk Factors – We may be unable to protect our intellectual property rights and may be liable for infringing the intellectual property rights of others.”

Government Regulation

Existing or future legislation could limit the growth or use of the internet, which would curtail our revenue growth. Statutes and regulations directly applicable to internet communications, commerce and advertising are becoming more prevalent. Congress has passed laws regarding children’s online privacy, copyrights and taxation. The law remains

largely unsettled even in areas where there has been legislative action. It may take years to determine whether and how existing laws governing intellectual property, privacy, libel and taxation apply to the internet, e-commerce, m-commerce and online advertising. In addition, the growth and development of e-commerce may prompt calls for more stringent consumer protection laws, both in the United States and abroad.

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Certain of our proprietary technology allow for the storage of demographic data from our users. In 2000, the European Union adopted a directive addressing data privacy that may limit the collection and use of certain information regarding internet users. This directive may limit our ability to collect and use information collected by our technology in certain European countries. In addition, the Federal Trade Commission and several state governments have investigated the use by certain internet companies of personal information. We could incur significant additional expenses if new regulations regarding the use of personal information are introduced or if our privacy practices are investigated.

Employees

As of December 31, 2007, we had twenty-five (25) employees, including twelve (12) employees located at our headquarters in Atlanta, Georgia, and thirteen (13) employees at our Aachen, Germany office. None of our employees are represented by a labor union or bound by a collective bargaining agreement. We believe that our employee relations are good.

Environmental Regulations

Some risks of costs and liabilities related to environmental matters were inherent in our discontinued operations, as with many similar businesses, and our operations are subject to certain federal, state, and local environmental regulatory requirements relating to environmental and waste management. In connection with our discontinued operations, we periodically generated and handled limited amounts of materials that were considered hazardous waste under applicable law. We contracted for the off-site disposal of these materials. We believe we have operated in compliance with applicable environmental regulations related to these materials as of December 31, 2007.

ITEM 1A.

Risk factors

You should carefully consider the following factors and all other information contained in this Form 10-K before you make any investment decisions with respect to our securities. The risks and uncertainties described below may not be the only risks we face.

Risks Related to Our Business

We have incurred losses since inception and could incur losses in the future, and we have a substantial accumulated deficit and a substantial working capital deficit, which means that we may not be able to continue operations.

We have incurred substantial operating losses since inception, and could continue to incur substantial losses for the foreseeable future. To succeed, we must develop new client and customer relationships and substantially increase our revenue derived from improved products and additional value-added services. We have expended, and to the extent we have available financing, we intend to continue to expend, substantial resources to develop and improve our products, increase our value-added services and to market our products and services. These development and marketing expenses must be incurred well in advance of the recognition of revenue. As a result, we may not be able to achieve or sustain profitability. A number of factors could increase our operating expenses, such as:

- adapting corporate infrastructure and administrative resources to accommodate additional customers and future growth;

- developing products, distribution, marketing, and management for the broadest-possible market;
- broadening customer technical support capabilities;
- developing or acquiring new products and associated technical infrastructure;
- developing additional indirect distribution partners;
- increased costs from third party service providers;
- improving data security features; and
- legal fees and settlements associated with litigation and contingencies.

To the extent that increases in operating expenses are not offset by increases in revenues, operating losses will increase.

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America, which contemplate our continuation as a going concern. Net loss for the years ended December 31, 2007 and 2006 was \$40.6 million and \$68.4 million, respectively. Net cash used for operations was \$8.3 million and \$9.6 million for the years ended December 31, 2007 and 2006, respectively. We also have an accumulated deficit of \$201.6 million and a working capital deficit of \$85.5 million as of December 31, 2007.

We have an obligation as of December 31, 2007 of \$4.5 million relating to purchase price guarantee associated with our acquisition of 12Snap.

The items discussed above raise substantial doubts about our ability to continue as a going concern.

We will need to raise additional funds to continue our operations.

We had cash balances of \$1.4 million as of December 31, 2007. Additionally, during January 2008 we sold our remaining ten percent (10%) ownership interest in 12Snap resulting in net cash to us of \$0.8 million. In order to satisfy our obligations that are currently due and that will come due, and maintain our operations in the absence of a material increase in revenues, we will need to raise additional cash from outside sources.

In the event that i) our stock price does not increase to levels where we can force exercise of enough of our outstanding warrants to generate material operating capital, ii) the market for our stock will not support the sale of shares underlying such warrants or other funding sources, or iii) we do not realize a material increase in revenue during the next twelve (12) months, we will have to seek additional cash sources.

There can be no assurances that such funding sources will be available. If necessary funds are not available, our business and operations would be materially adversely affected and in such event, we would be forced to attempt to reduce costs and adjust our business plan, and could be forced to sell certain of our assets, including but not limited to, our remaining subsidiaries and curtail or cease our operations.

Our management and Board of Directors may be unable to execute their plans to turn around the Company, grow our revenues and achieve profitability and positive cash flows.

In February 2007 we added George O'Leary to our Board of Directors. In June 2007, the previous CEO was replaced by William J. Hoffman as Chief Executive Officer, and since that time we have also added several key executives to

our management team. If our new CEO is unable to attract and retain management to execute our plans, or if management and the Board of Directors are unable to execute those plans, then we may fail to grow our revenues, contain costs and achieve profitability and positive cash flows.

