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**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 fiscal year ended December 31, 2003

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 (NO FEE REQUIRED)**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number: 0-31659

**NOVATEL WIRELESS, INC.**

(exact name of registrant as specified in its charter)

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

**86-0824673**  
(I.R.S. Employer  
Identification No.)

**9255 Towne Centre Drive, Suite 225,**  
**San Diego, California**  
(Address of principal executive offices)

**92121**  
(zip code)

Registrant's telephone number, including area code: (858) 320-8800

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:  
Common Stock, par value \$.001 per share

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 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 an accelerated filer (as defined in Rule 12b-2 of the Act). YES  NO

The number of shares of the Registrant's common stock outstanding as of March 9, 2004 was 16,104,906.

The aggregate market value of the voting common stock held by non-affiliates of the registrant, based on the closing price of the Common Stock on June 30, 2003 as reported by The Nasdaq SmallCap Market, was approximately \$36,140,576. For the purposes of this calculation, shares owned by officers, directors (and their affiliates) and 5% or greater shareholders, based on Schedule 13G filings, have been excluded. This exclusion is not intended, nor shall it be deemed, to be an admission that such persons are affiliates of the Registrant. The Registrant does not have any non-voting stock issued or outstanding.

**Documents Incorporated by Reference**

None.

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As used in this report on Form 10-K, unless the context otherwise requires, the terms “we,” “us,” “our,” “the Company” and “Novatel Wireless” refer to Novatel Wireless, Inc., a Delaware corporation, and its wholly-owned subsidiaries.

### **Forward-Looking Statements**

This report contains forward-looking statements based on our current expectations, assumptions, estimates and projections about Novatel Wireless and our industry. These forward-looking statements include, but are not limited to, statements regarding: increasing demand for access to wireless data and factors affecting that demand; the future growth of wireless wide area networking and factors affecting that growth; changes in wireless transmission standards and technologies; growth in 3G infrastructure spending; the sufficiency of our capital resources; the effect of changes in accounting standards and in aspects of our critical accounting policies; and our general business and strategy, including plans and expectations relating to technology, product development, strategic relationships, customers, manufacturing, service activities and international expansion. The words “anticipate,” “believe,” “expect,” “intend,” “plan,” “project,” “will” and similar words and phrases are also intended to identify forward-looking statements.

Forward-looking statements involve risks and uncertainties. Our actual results could differ materially from those anticipated in such forward-looking statements as a result of certain factors, as more fully described elsewhere in this report. For a detailed discussion of these risks and uncertainties, see the “Business — Risks Related to Our Business” section of this Form 10-K. We undertake no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur in the future, except as otherwise required pursuant to our on-going reporting obligations under the Securities Exchange Act of 1934, as amended.

### **Trademarks**

The Novatel Wireless logo, “Merlin,” “Freedom Box” and “Expedite” are trademarks of Novatel Wireless, Inc. All other brand names and trademarks mentioned herein are the property of their respective holders.

## PART I

### Item 1. *Business*

#### Overview

We are a provider of wireless broadband access solutions for the worldwide mobile communications market. Our broad range of products includes wireless data modems and software for laptop PCs, embedded wireless modules for original equipment manufacturers, or OEMs, and ruggedized wireless data modems for public safety and telemetry applications. Through the integration of our hardware and software, our products are designed to operate on a majority of global wireless networks and provide mobile subscribers with secure and convenient access to data including corporate, public and personal information through the Internet and enterprise networks. We also offer software engineering and design services to our customers to facilitate the use of our products.

Our primary end customers include wireless operators such as AT&T Wireless, China Mobile, Sprint PCS, Telecom Italia Mobile, Telefonica and T-Mobile. We also sell our products domestically and internationally through OEMs such as Dell and Hewlett-Packard (HP), value added resellers, or VARs, such as Beida Jade Bird Group, and distributors such as Hugh Symons. In addition, we have strategic technology, development and marketing relationships with leading companies such as Lucent Technologies, Sprint PCS and International Business Machines (IBM), each of which is also a customer of ours.

#### Industry Background

##### *Growth of the Wireless Communications Market*

The wireless communications market has experienced rapid growth as wireless communications products and services have become widely available and increasingly affordable. This rapid growth has been driven by numerous factors including technological advances, reduced costs for wireless devices, changes in telecommunications regulations and the allocation and licensing of additional radio spectrum. According to a January 2004 report from Gartner Dataquest, an industry research firm, worldwide wireless operators have experienced compound annual revenue and subscriber growth rates of 20.4% and 34.1%, respectively, over the five-year period from 1998 to 2003.

##### *Growth of Wireless Wide Area Networking*

While wireless networks have traditionally been used to support voice communications, the industry is currently experiencing an increased demand to support wireless access to data. As a result, solutions for wireless access to data such as Wireless Wide Area Networking (WWAN), Wireless Local Area Networking (WLAN, 802.11x, or Wi-Fi) and Bluetooth have become increasingly common. While Bluetooth and WLAN technologies are designed to operate in low mobility or stationary environments, WWAN has the ability to offer broader coverage and increased mobility and roaming capabilities.

IDC, an industry research firm, reported in September of 2003 that WWAN infrastructure spending was \$38.4 billion in 2002. We anticipate that future growth in the WWAN market will be driven by several factors, including:

- *Increased Mobility of the Modern Workforce.* The increased mobility of the modern workforce and the prevalence of the Internet and e-mail as business tools have increased demand for wireless access to data. Mobility provided by WWAN access solutions has the potential to substantially increase worker productivity away from the office.
- *Upgrades in Wireless Infrastructure.* Over the past several years, wireless operators have been upgrading their networks to support fast and reliable data transmission. As these wireless data services become more broadly available and service plans become more affordable, an increasing number of laptop PCs and other access devices are being designed to use WWAN in order to access data.

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- *Increased Availability and Sophistication of Mobile Computing Devices.* In response to the greater availability of wireless data services, OEMs have introduced a range of devices that incorporate WWAN functionality including laptop PCs, personal digital assistants, or PDAs, and mobile phones.

### *Emergence of Next Generation Wireless Networks*

WWAN services are provided over wireless communication networks, which operate using several different and evolving transmission standards and radio band frequencies. First-generation, or 1G, analog technology is expected to be phased-out over the next five years. Second-generation, or 2G, wireless technologies include Code Division Multiple Access (CDMA), Time Division Multiple Access (TDMA), Global System for Mobile Communications (GSM) and Integrated Digital Enhanced Network (iDEN). Second generation technologies have been supplemented with 2.5G packet-switched data services, which have extended the life of 2G services by adding wireless data capabilities. These 2.5G technologies include:

- *General Packet Radio Service, or GPRS,* is a packet-switched service that allows data to be sent and received over the existing GSM network. With GPRS, subscribers can attain wireless access to data at maximum speeds of up to 114 kbps, approximately twice as fast as the maximum connection speed of a standard dial-up wireline connection which is 56.6 kbps.
- *CDMA 1xRTT* provides voice and data capabilities which allow subscribers to attain wireless access to data at maximum speeds of up to 153.6 kbps.
- *Enhanced Data Rates for GSM Evolution, or EDGE,* further enhances GSM/GPRS by adopting new modulation technology to achieve higher data rates. With EDGE, subscribers can attain wireless access to data at maximum speeds of up to 384 kbps.

The wireless communications industry has developed specifications for third generation, or 3G, standards to accommodate increased data transmission and to allow for faster transmission speeds. According to IDC, 3G infrastructure spending is forecasted to grow at a 51.0% compound annual growth rate from \$4.0 billion in 2003 to \$16.0 billion in 2007. This significant growth is driven by demand from wireless operators for spectrum efficiencies, increased average revenue per user, or ARPU, reduced subscriber turnover, increased network capacity, lower operating costs and expanded revenue opportunities provided by 3G technologies. 3G technologies include:

- *Universal Mobile Telecommunications Systems, or UMTS,* is the 3G standard designed to be employed by GSM operators. UMTS is also referred to as Wideband Code Division Multiple Access, or W-CDMA. With UMTS, subscribers can attain wireless access to data at maximum speeds of up to 384 kbps.
- *CDMA 1xEV-DO* and *CDMA 1xEV-DV* are the 3G standards designed to be employed by CDMA operators and provide wireless access speeds comparable to wireline DSL services. Subscribers can attain wireless access to data at maximum speeds of up to 2.4 Mbps on CDMA 1xEV-DO networks and 3.1 Mbps on CDMA 1xEV-DV networks.

## Our Products

We offer a wide range of wireless broadband access solutions for the worldwide mobile communications market. Our products are designed to operate across 2.5G wireless networks, including GPRS and CDMA 1xRTT, and 3G networks, including W-CDMA/UMTS and CDMA 1xEV-DO, using single or multiple radio band frequencies. The following table illustrates our principal product lines and applications:

<u>Product</u>	<u>Applications</u>
<b><u>Wireless PC Card Modems</u></b> <ul style="list-style-type: none"><li>Merlin Wireless PC Card for UMTS</li><li>Merlin Wireless PC Card for CDMA 1xRTT</li><li>Merlin Wireless PC Card for GPRS</li><li>Merlin Wireless PC Card for CDMA 1xEV-DO (currently in development)</li></ul>	<ul style="list-style-type: none"><li>Laptop PCs and other platforms supporting PCMCIA interfaces</li></ul>
<b><u>Embedded Wireless Modules for OEMs</u></b> <ul style="list-style-type: none"><li>Expedite Wireless Embedded Modem for CDMA 1xRTT</li></ul>	<ul style="list-style-type: none"><li>Point of sale terminals, automated teller machines, vehicle and asset tracking and inventory monitoring</li></ul>
<b><u>Ruggedized Wireless Data Modems</u></b> <ul style="list-style-type: none"><li>Freedom Box for GPRS</li><li>Freedom Box for CDMA 1xRTT</li></ul>	<ul style="list-style-type: none"><li>Public safety and telemetry</li></ul>

### *Merlin Wireless PC Card Modems*

Our *Merlin Wireless PC Card* modems provide mobile subscribers with secure and convenient high-speed wireless access to data including corporate, public and personal information through the Internet and enterprise networks. Each of our *Merlin Wireless PC Card* Modems is approximately the size of a credit card and slides inside standard Type II PC card slots in laptop PCs and other products employing PCMCIA interfaces. All our modems utilize modem manager software and are compatible with a range of devices including laptop PCs, PDAs and mobile phones as well as operating systems including Microsoft Windows 98, 2000, Millennium Edition, XP and Pocket PC. The following is a representative selection of our *Merlin Wireless PC Card Modems*:

- The *Merlin U530* is a tri-band (900/1800/2100 MHz) wireless PC card modem designed to provide mobile subscribers with high-speed wireless access to data over 3G UMTS networks. The *Merlin U530* enables wireless access to data at speeds of up to approximately 384 kbps in UMTS coverage areas and 53.6 kbps in GPRS coverage areas. This product was introduced in March 2003 and was created under a joint development agreement with Lucent Technologies. Commercial sales of the *Merlin U530* began in December 2003.
- The *Merlin C201* is a single band (1900 MHz) wireless PC card modem designed to provide mobile subscribers with high-speed wireless access to data over CDMA 1xRTT networks. The *Merlin C201* enables wireless access to data at maximum speeds of up to approximately 153.6 kbps in CDMA 1xRTT coverage areas and 14.4 kbps in CDMA circuit-switched coverage areas. Equipped with a built-in antenna for maximum network coverage and enhanced portability, the *Merlin C201* also enables two-way Short Messaging Service, or SMS, capabilities allowing subscribers to send and receive text messages for quick person-to-person or group chats from their laptop PCs.
- The *Merlin G301* Series is a tri-band (900/1800/1900 MHz) wireless PC card modem designed to provide mobile subscribers with wireless access to data over global GSM/GPRS networks. The *Merlin G301* enables wireless access to data at maximum speeds of up to approximately 53.6 kbps in GPRS coverage areas and 14.4 kbps in GSM coverage areas. The *Merlin G301* is equipped with a robust removable antenna to enhance portability and enables SMS capabilities.

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- The *Merlin G100* is a single band (1900 MHz) wireless PC card modem designed to provide mobile subscribers with wireless access to data over GSM/GPRS networks. The *Merlin G100* enables wireless access to data at maximum speeds of up to approximately 53.6 kbps in GPRS coverage areas and 14.4 kbps in GSM coverage areas.
- The *Merlin G201* is a dual band (900/1800 MHz) wireless PC card modem designed to provide mobile subscribers with wireless access to data over GSM/GPRS networks. The *Merlin G201* enables wireless access to data at maximum speeds of up to approximately 53.6 kbps in GPRS coverage areas and 14.4 kbps in GSM coverage areas. The *Merlin G201* is equipped with a robust removable antenna to enhance portability and enables SMS capabilities.
- The *Merlin V620* is a dual band (800/1900 MHz) wireless PC card modem being designed to provide mobile subscribers with wireless access to data at maximum speeds of up to approximately 2.4 Mbps on CDMA 1xEV-DO networks. In February 2004, we announced an agreement with Verizon Wireless to introduce products based on the CDMA 1xEV-DO standard.

### *Expedite Embedded Wireless Modules for OEMs*

The *Expedite C201 Wireless Embedded Modem* is a single band wireless module designed for integration into equipment and devices for vertical markets such as inventory monitoring, automated banking, vending machines, vehicle tracking, security, point of sale and other applications. The modem has two separate firmware options to provide high-speed wireless access to data at maximum speeds of up to approximately 153.6 kbps in CDMA 1xRTT coverage areas or 14.4 kbps in CDMA circuit-switched coverage areas. The *Expedite C201* enables SMS text messaging and can enhance laptop PCs, handheld devices, tablet PCs and smart phones by providing high-speed wireless access to data including corporate, public and personal information through the Internet and enterprise networks. The modules' over-the-air download feature also helps reduce life cycle cost and keeps the product operating at peak performance by allowing firmware upgrades without having to physically recall the unit.

### *Freedom Box Ruggedized Wireless Data Modems*

The *Freedom Box* family of ruggedized wireless data modems includes the *Freedom Box FB 200C* for use in CDMA 1xRTT coverage areas and the *Freedom Box FB 200G* for use in GSM/GPRS coverage areas. The *Freedom Box* product line is designed to operate in harsh conditions, including extremes of temperature, humidity, vibration and noise. Integrated with its own TCP/IP stack, which facilitates transmission of serial data from non-IP devices, the *Freedom Box* is a powerful and versatile communications device that enables remote telemetry applications, such as utilities monitoring, traffic measurement and control, public safety applications, environmental monitoring and primary and redundant connectivity for automated teller machines, routers and enterprise servers.

## **Our Strategy**

Our objective is to be the leading provider of wireless broadband access solutions for the worldwide mobile communications market. The key elements of our strategy are to:

- *Commercialize Our 3G Products Worldwide.* We intend to offer our customers the most advanced 3G products available on the market. To date, we have announced orders for 3G UMTS products from wireless operators such as T-Mobile and Telefonica. Additionally, in February 2004 we announced an agreement with Verizon Wireless to introduce products based on the 3G CDMA 1xEV-DO standard. We intend to continue expanding the rollout of our 3G products with leading wireless operators worldwide.

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- *Leverage Strategic Relationships with Wireless Industry Leaders.* We believe that strategic relationships with wireless industry leaders are critical to our ability to leverage sales opportunities and ensure that our technology investments address customer needs. Through strategic relationships, we increased market penetration by accessing the resources of others, including access to distribution resources, exclusive sales and marketing and insight into future technology and market opportunities. For example, our strategic relationships with wireless industry leaders such as Lucent Technologies allow us to leverage their significant resources, network capabilities and service offerings in order to penetrate operators of 3G UMTS networks. In addition to Lucent Technologies, our strategic relationships include agreements with major wireless operators such as Sprint PCS and leading technology companies such as IBM.
- *Capitalize on Our Direct Relationships with Wireless Operators.* We intend to capitalize on our direct relationships with wireless operators in order to increase our worldwide market position. In Europe, we are working closely with wireless operators of 3G UMTS wireless networks. In North America, we have an agreement with Verizon Wireless to introduce high-speed wireless access products using the 3G CDMA 1xEV-DO standard and we continue to work closely with Sprint PCS on CDMA 1xRTT. In Asia, we intend to strengthen our market presence by continuing to work directly with wireless operators such as China Unicom and China Mobile, or through VARs which provision for operators, by offering comprehensive solutions based on our wireless expertise.
- *Continue to Target Key Vertical Market Opportunities and Penetrate New Markets.* We believe that on-going developments in wireless technologies will create additional vertical market opportunities and more applications for our products. Currently, we market our broadband wireless access solutions to key vertical industry segments by offering innovative products that increase productivity, reduce costs and create operational efficiencies. We are currently working with, among others, AT&T Wireless and Sprint PCS in telemetry applications, Commerciant in retail/point of sale, Caltrans in public safety, Puget Sound Energy in utilities and Remote Knowledge (through Suntron) in asset tracking.
- *Increase the Value of Our Products.* We will continue to add new features and functionality to our products and develop new software applications to enhance the overall value and ease of use that our products provide to our customers. For example, we intend to add features such as two-way SMS, voice capabilities, Virtual Private Networks, or VPNs, for secure access and Global Positioning System, or GPS, for location monitoring. We also intend to continue to apply our technological expertise to reduce the overall size, weight, cost and power consumption of our products, while increasing their capabilities and performance.

### Customers

Our global end-customer base is comprised of wireless operators, OEMs, VARs, distributors and various companies in other vertical markets. The following is a representative selection of our current end-customer base:

#### Wireless Operators

AT&T Wireless  
Orange  
Sprint PCS  
Telefonica  
T-Mobile  
Verizon Wireless  
Wind

#### OEMs, VARs, and Distributors

Beida Jade Bird Group  
Computer Discount Warehouse (CDW)  
Dell  
HP  
Hugh Symons  
IBM  
Remote Knowledge (through Suntron)

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Our strong customer relationships provide us with the opportunity to expand our market reach and sales:

- *Wireless Operators.* By working closely with our wireless operator customers, we are able to drive demand for our products by combining our expertise in wireless technologies with the operators' sales and marketing reach over a global subscriber base. Our operator customers also provide us with important services, including field trial participation, technical support, wireless data marketing and access to additional indirect distribution channels. To leverage these services, we provide operators with early access to new products and technical training.
- *OEMs, VARs and Distributors.* Our OEM customers integrate our products into devices that they manufacture and sell to end-users through their own direct sales forces and indirect distribution channels. Our products are capable of being integrated into a broad range of devices, including but not limited to laptop PCs, vehicle location devices, electric meters, vending machines, industrial equipment and wireless credit processing and point of sale devices. Examples of our OEM customers include Dell, HP and Remote Knowledge. We seek to build strong relationships with our OEM customers by working closely with them and providing application engineering support during the integration of our products. We also work closely with select domestic and international VARs and distributors and view them as important channels for the distribution of our products. Examples of our VARs and distributors include Beida Jade Bird Group in China and Hugh Symons in Europe.

### **Strategic Relationships**

We continue to develop and maintain strategic relationships with wireless industry leaders. Through strategic relationships, we have been able to increase market penetration by leveraging the resources of our channel partners, including their access to distribution resources, increased sales opportunities and insight into future technology and market opportunities.

Our strategic relationships include technology and marketing relationships with wireless operators, OEM customers that integrate our products into other devices, VARs, distributors and leading technology providers. Our key strategic relationships include:

- *Sprint PCS.* Sprint PCS operates an all-digital, nationwide, voice and data wireless network in the United States. In February 2002, we entered into a three-year global agreement under which we develop and provide Sprint PCS with wireless PC card modems that run on Sprint PCS' CDMA 1xRTT network as well as on a next generation 3G network.
- *Verizon Wireless.* In January 2004, we entered into an agreement with Verizon Wireless to introduce high-speed wireless access products based on the 3G CDMA 1xEV-DO standard. Under the terms of the agreement, we have agreed to develop and supply products to Verizon Wireless based on the CDMA 1xEV-DO standard, subject to certain conditions.
- *Lucent Technologies.* In June 2002, we entered into a Joint Development Agreement with Lucent to create next generation, wireless data access products designed to provide mobile subscribers with high-speed wireless access to the Internet and corporate intranets over 3G UMTS networks. Under the terms of the agreement, as amended in July 2003, we have developed multi-mode, multi-band UMTS/GPRS wireless PC card modems, and Lucent has contributed research, development and marketing support.
- *IBM.* In September 2002, we entered into a global supply agreement with IBM. Under the terms of this agreement, IBM offers its enterprise customers the option to bundle our wireless broadband access solutions along with their laptop PCs. We intend to continue to work closely with IBM to promote the sales of our products directly into the enterprise marketplace.

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### **Sales and Marketing**

We sell our wireless broadband access solutions to wireless operators, OEMs, VARs and distributors located worldwide. Most of our sales to wireless operators and OEMs are sold directly through our sales force. We also use an indirect sales distribution model through the use of select VARs and distributors.

In order to maintain strong sales relationships, we provide co-marketing, trade show support and demo units for merchandising. We are also engaged in a wide variety of activities, such as awareness and lead generation programs as well as product marketing. Other marketing initiatives include public relations, seminars, and co-marketing and co-branding with partners.

We are continuing to drive widespread adoption of our products through increased global marketing activities, expansion of our sales team and distribution networks, and continued leverage of our strategic relationships with wireless industry leaders.

### **Product Development and Research**

Our product development efforts are focused on developing innovative wireless broadband access solutions to address opportunities presented by next generation wireless networks and improving the functionality, design and performance of our products. We intend to continue to identify and respond to our customers' needs by introducing new product designs with an emphasis on ease-of-use, performance, size, weight, cost and power consumption.

We manage our products through a structured life cycle process, from identifying initial customer requirements through development and commercial introduction to eventual phase-out. During product development, emphasis is placed on time-to-market, meeting industry standards and customer product specifications, ease of integration, cost reduction, manufacturability, quality and reliability.

Our product development efforts leverage our core expertise in the following key technology areas:

- *Advanced Radio Frequency Design.* Advanced Radio Frequency, or RF, design is the key technology that determines the performance of wireless devices. We have specialized in 800/900/1800/1900 and 2100 MHz designs for digital cellular, packet data and spread spectrum systems. Our proprietary RF technology contributes to the performance, small size and low cost of our products.
- *Miniaturization and System Integration.* Small systems integration is the integration of application specific integrated circuits, or ASICs, RF and baseband integrated circuits and packaging technologies. The complete wireless modem is packaged into a module less than half the size of a credit card through the use of advanced integrated circuit designs, embedded software modems and multi-layer RF stripline technologies. We will continue to augment our miniaturization technology, working to further reduce the size and cost of current and future products.

### **Manufacturing**

We outsource the manufacturing of all our products to LG Innotek Co., Ltd, a subsidiary of LG Group, located in South Korea. Under our manufacturing agreement, LG Innotek provides us with services including component procurement, product manufacturing, final assembly, testing, quality control, fulfillment and delivery services.

We outsource our manufacturing in an effort to:

- focus on our core competencies;
- minimize our capital expenditures and lease obligations;
- realize manufacturer economies of scale;

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- achieve production scalability by adjusting manufacturing volumes to meet changes in demand; and
- access best-in-class manufacturing resources.

We believe that additional assembly line efficiencies are realized due to our product architecture and our commitment to process design. Direct materials for our products consist of tooled parts such as printed circuit boards, molded plastic components, metal components and ASICs, as well as industry-standard components such as transistors, integrated circuits, piezo-electric filters, duplexers, inductors, resistors and capacitors. Many of the components used in our products are similar to those used in cellular telephone handsets, helping to reduce our manufacturing costs through the use of standard components.

Our operations organization manages our relationship with LG Innotek and focuses on improvements in design-for-manufacturing, test procedures, quality, cost optimization and production scheduling.

### **Intellectual Property**

Our wireless broadband access solutions and operations rely on and benefit from our portfolio of intellectual property. We currently own 22 United States patents, four of which are also registered in Canada. In addition, we currently have 28 United States patent applications pending. From time to time we also seek to have our patents registered in selected foreign jurisdictions. The patents that we currently own expire at various times between 2005 and 2020.

We own a number of trademarks and service marks, including Expedite, Merlin, and Freedom Box, each with its accompanying designs, as well as the Novatel Wireless logo.

We license CDMA technology from QUALCOMM Incorporated for integration into our products. These licenses allow us to manufacture CDMA-based wireless modems and to sell or distribute them worldwide. In connection with such sales, we pay royalties to QUALCOMM. The licenses do not have a specified term and may be terminated by us or by QUALCOMM for cause or upon the occurrence of other specified events. In addition, we may terminate the licenses for any reason upon 60 days prior written notice. We have also granted to QUALCOMM a nontransferable, worldwide, nonexclusive, fully-paid and royalty-free license to use, in connection with wireless communications applications, certain intellectual property of ours that is used in our products which incorporate the CDMA technology licensed to us by QUALCOMM. This license allows QUALCOMM to make, use, sell or dispose of such products and the related components.

### **Competition**

The market for wireless broadband access solutions is rapidly evolving and highly competitive. It is likely to continue to be significantly affected by the evolution of new wireless technology standards, new product introductions and the market activities of industry participants. We believe the principal competitive factors impacting the market for our products are form factor, time-to-market, features and functionality, performance, quality, brand and price. To maintain and improve our competitive position, we must continue to develop new products, expand our customer base, grow our distribution network and leverage our strategic relationships.

Our primary competitors include Option International, Sierra Wireless, Sony-Ericsson and Wavecom. We believe that we have advantages over each of our primary competitors due to the technical and engineering design of our products, the broad range of solutions that we offer, the ease-of-use of our products, our ability to adapt our products to specific customer needs and our competitive pricing. As the market for wireless broadband access solutions expands, other entrants may seek to compete with us.

### **Employees**

As of December 31, 2003, we had 80 employees, including nine in sales and marketing, 50 in product development and research, seven in operations, and 14 in general and administrative functions. Our employees are not represented by any collective bargaining unit and we consider our relationship with our employees to be good.

## **Risks Related to Our Business**

***We have incurred significant operating losses since our inception and if we are unable to increase our revenue and gross margins, we may continue to incur significant net losses and negative cash flow from operations.***

We have incurred significant operating losses and net losses in each annual and quarterly period since our inception. We incurred net losses applicable to common shareholders of \$16.0 million for 2003, \$53.5 million for 2002 and \$91.0 million for 2001. In addition, we had negative cash flows from operations of \$0.4 million for 2003, \$28.7 million for 2002 and \$55.4 million for 2001. As of December 31, 2003, we had an accumulated deficit of \$246.4 million. If we are unable to increase our revenue and gross margins sufficiently to offset our expenses, we will not achieve profitability and our operating losses, net losses and negative cash flow from operations will continue.

***If we experience negative cash flow from operations, we may need to raise additional capital to fund our working capital requirements and anticipated capital expenditures.***

We have experienced negative cash flow from operations in the past and have only recently become cash flow positive. We currently anticipate that budgeted cash flow from operations, together with our current working capital, including cash received in the private placement transaction we completed in January 2004, will be sufficient to meet our working capital requirements and anticipated capital expenditures for the next twelve months. However, the forecast of our ability to meet working capital requirements and anticipated capital expenditures in the future is a forward-looking statement that involves risks and uncertainties and actual results could vary. Our budgeted cash flow from operations include assumptions about increased sales volumes. If we are unable to increase our revenue and gross margins sufficiently to offset our operating expenses, we will continue to experience negative cash flow from operations and may be required to raise additional capital. Our ability to obtain additional capital will depend on financial market conditions, investor expectations for the wireless technology industry, the national economy and other factors outside our control. If we issue equity securities, our stockholders will experience dilution. There can be no assurance that any such additional financing will be available on acceptable terms, or at all. If needed, the failure to secure additional financing would have a material adverse effect on our business, financial condition and operating results.

***Our failure to predict and comply with evolving industry standards, including 3G standards, could hurt our ability to introduce and sell new products.***

In our industry, it is critical to our success that we accurately anticipate evolving wireless standards and that our products comply with such standards. We are currently focused on manufacturing and engineering products that comply with 3G wireless standards. Any failure of our products to comply with 3G or future standards could delay their introduction and require costly and time-consuming engineering changes. Additionally, if wireless operators or subscribers fail to adopt the standards to which we engineer our products, then sales of our new products could be materially harmed.

***If we fail to develop and introduce new products successfully, we may lose key customers or product orders and may not be able to compete effectively.***

The development of new products requires technological innovation and can be difficult, lengthy and costly. In addition, wireless operators require that wireless data systems deployed on their networks comply with their own standards, which may differ from the standards of other operators. If we fail to complete the development of products on time and within budgeted amounts, we will be unable to introduce new products into the market on a timely basis, if at all. In addition, as we introduce new versions of our existing products or new products altogether, our current customers may not require the technological innovations of these products and may not purchase them.

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Further, as part of our strategy, we enter into contracts with customers pursuant to which we develop products for later sale to the customer. Our ability to generate future revenue under any such contracts depends upon our ability to develop products in a cost effective manner that meet defined specifications and are suitable for manufacturing. Our ability to maximize the benefits of these contracts depends in part on the following:

- We have priced these contracts based on our estimated production costs. If our actual production costs are higher than our estimated costs, our gross margins on the corresponding contracts will decrease.
- If we are unable to commit the necessary resources or are otherwise unable to successfully develop products as required by the terms of these contracts, our customers may cancel the related contracts, we may not be entitled to recover any costs that we incurred for research and development, sales and marketing, production and otherwise, and we may be subject to additional costs such as contractual penalties.
- If we fail to deliver in a timely manner a product that is suitable for manufacture or if a customer determines that a product we delivered does not meet the agreed-upon specifications, we may have to reduce the price we can charge for such product, or we may be required to pay damages to the customer.

If we are unable to successfully manage these risks or meet required deadlines in connection with one or more of our key contracts, we may lose key customers or orders and our business could be harmed.

### ***The wireless communications market is highly competitive, and we may be unable to compete effectively.***

The markets for wireless data access products are highly competitive, and we expect competition to increase. Many of our competitors or potential competitors have significantly greater financial, technical and marketing resources than we do. These competitors may be able to respond more rapidly than we can to new or emerging technologies or changes in customer requirements. They also may devote greater resources than we do to the development, promotion and sale of their respective products.

Many of our current or potential competitors have more extensive customer bases and broader customer relationships and industry relationships that they can leverage to establish relationships with many of our current and potential customers. These companies also have more established customer support and professional services organizations. In addition, these companies may adopt aggressive pricing policies or offer more attractive terms to customers, may bundle their competitive products with broader product offerings and may introduce new products and enhancements. Current and potential competitors may establish cooperative relationships among themselves or with third parties to enhance their products. As a result, it is possible that new competitors or relationships among competitors may emerge and rapidly acquire significant market share.

Our wireless communications products compete with a variety of devices, including wireless modems, wireless handsets, wireless handheld computing devices and other wireless devices. Our current and potential competitors include:

- wireless data modem providers, such as Option International, Sierra Wireless, Sony-Ericsson and Wavecom;
- wireless device manufacturers, such as palmOne and Research in Motion; and
- wireless handset manufacturers, such as Motorola, Nokia, Samsung and Sony-Ericsson.

We expect our competitors to continue to improve the performance of their current products and to introduce new products, services and technologies. For instance, new models of laptop PCs and handheld computing devices could include internal wireless modems installed by the manufacturer which would reduce the need for consumers to purchase our aftermarket wireless modem products. Successful new product introductions or enhancements by our competitors could reduce our sales and the market acceptance of our products, cause intense price competition and make our products obsolete. To be competitive, we must continue to invest

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significant resources in research and development, sales and marketing, and customer support. We cannot be sure that we will have sufficient resources to make these investments or that we will be able to make the technological advances necessary to remain competitive. Increased competition could result in price reductions, fewer customer orders, reduced margins and loss of our market share. Our failure to compete successfully could seriously harm our business, financial condition and results of operations.

***If we fail to develop and maintain strategic relationships, we may not be able to penetrate new markets.***

A key element of our business strategy is to penetrate new markets by developing new products through strategic relationships with industry leaders in wireless communications. We are currently investing, and plan to continue to invest, significant resources to develop these relationships. We believe that our success in penetrating new markets for our products will depend, in part, on our ability to maintain these relationships and to cultivate additional or alternative relationships. We cannot assure you that we will be able to develop additional strategic relationships, that existing relationships will survive and successfully achieve their purposes or that the companies with whom we have strategic relationships will not form competing arrangements.

***We depend upon a small number of our customers for a substantial portion of our revenue and we currently rely upon a few of our key customers to make contractual minimum volume purchases.***

A significant portion of our revenue comes from a small number of customers. Our top ten customers for 2003 and 2002 accounted for approximately 94.7% and 84.6% of our revenue, respectively. For 2003, Sprint PCS and Lucent accounted for approximately 55.0% and 29.8% of our revenue, respectively. For 2002, Sprint PCS and @Road accounted for approximately 46.5% and 7.0% of our revenue, respectively. We expect that a small number of customers will continue to account for a substantial portion of our revenue. If there is a downturn in the business of one or more of our current customers, or if one or more of our current customers files for bankruptcy or becomes insolvent, such as occurred with respect to two of our former significant customers in 2001, our revenue may decline. Similarly, our revenue could be adversely affected if we are unable to retain the business of any of our significant customers or if we are unable to diversify our customer base.

Some of our key customers are currently obligated to make minimum volume purchases pursuant to contracts. Following the expiration of such obligations, those customers will not be obligated to make any purchases of our products. In addition, a majority of our customers purchase our products under purchase orders and not pursuant to any contractual minimum purchase obligations. Such customers have no contractual obligation to purchase our products and if they do not continue to make purchases, our revenue and our share price may decline.

***The sale of our products depends on the demand for broadband wireless access to enterprise networks and the Internet.***

The markets for broadband wireless access solutions are relatively new and rapidly evolving, both technologically and competitively, and the successful sale of related products and services depends in part on the demand for wireless access to enterprise networks and the Internet. In the past, market demand for both wireless products and wireless access services for the transmission of data has developed at a slower rate than we anticipated and our product sales have not generated sufficient revenue to cover our operating costs. The failure of these markets to continue to grow may adversely impact the demand for our products, and as a result, our business, financial condition and results of operations may be harmed.

***The marketability of our products may suffer if wireless telecommunications operators do not deliver acceptable wireless services.***

The success of our business depends on the capacity, affordability and reliability of wireless data networks provided by various wireless telecommunications operators. Currently, various wireless telecommunications

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operators such as Sprint PCS, either directly or jointly with us, sell our products in connection with the sale of their wireless data services to their customers. Growth in demand for wireless data access may be limited if wireless telecommunications operators cease operations, fail to offer services which customers consider valuable, fail to maintain sufficient capacity to meet demand for wireless data access, delay the expansion of their wireless networks and services, fail to offer and maintain reliable wireless network services or fail to market their services effectively. In addition, our future growth depends on the successful deployment of next generation wireless data networks provided by third parties, including those networks for which we are currently developing products. If these next generation networks are not deployed or widely accepted, or if deployment is delayed, there will be no market for the products we are developing to operate on these networks. If any of these occurs, or if for any other reason the demand for wireless data access fails to grow, sales of our products will decline and our business could be harmed.

***If we do not properly manage the growth of our business, we may experience significant strains on our management and disruptions in our business.***

Various risks arise when companies and industries grow quickly. If our business grows, our ability to meet customer demand in a timely and efficient manner could be challenged. We may also experience production delays as we seek to meet increased demand for our products. Our failure to manage our growth could negatively impact our ability to execute on our operating plan and, accordingly, could have an adverse impact on our business, our cash flow and results of operations and our reputation with our customers.

***We depend on a single third-party manufacturer to produce all of our products which subjects us to potential disruptions in product supply and other potential adverse effects.***

We currently outsource the manufacture of all of our products to LG Innotek. We expect to continue to depend exclusively on LG Innotek or other third-party manufacturers to produce our products in a timely fashion and at satisfactory quality levels. LG Innotek is not obligated to supply products to us for any specific quantity, except as may be provided in particular purchase orders which we submit to them from time to time, and therefore could cease or reduce its business with us at its discretion. If LG Innotek experiences delays, disruptions, capacity constraints or quality control problems in their manufacturing operations, product shipments to our customers could be delayed, which would negatively impact our revenues and our competitive position and reputation. Further, if we are unable to manage successfully our relationship with LG Innotek, the quality and availability of our products may be harmed. If LG Innotek stopped manufacturing our products for any reason or reduced its manufacturing capacity, we may be unable to replace the lost manufacturing capacity on a timely basis, which would adversely impact our operations. In addition, if LG Innotek negatively changes the payment and other terms under which it agrees to manufacture for us and we are unable to locate a suitable alternative manufacturer, our manufacturing costs could significantly increase.

Because we outsource the manufacture of all of our products, the cost, quality and availability of third-party manufacturing operations are essential to the successful production and sale of our products. Our reliance on third-party manufacturers exposes us to a number of risks which are outside our control, including:

- unexpected increases in manufacturing costs;
- interruptions in shipments if a third-party manufacturer is unable to complete production in a timely manner;
- inability to control quality of finished products;
- inability to control delivery schedules;
- inability to control production levels and to meet minimum volume commitments to our customers;
- inability to control manufacturing yield;

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- inability to maintain adequate manufacturing capacity; and
- inability to secure adequate volumes of components.

We generally place orders with LG Innotek at least three months prior to scheduled delivery of products to our customers. Accordingly, if we inaccurately anticipate demand for our products, we may be unable to obtain adequate quantities of components to meet our customers' delivery requirements or, alternatively, we may accumulate excess inventories. If one or more of these events were to occur, we could experience increased costs, reduced revenue and lower product margins.

Although we promote ethical business practices and our operations personnel periodically visit and monitor the operations of LG Innotek, we do not control LG Innotek or their labor practices. If LG Innotek, or any other third-party manufacturer which we use in the future, violates United States or foreign laws or regulations, we may be subjected to extra duties, significant monetary penalties, adverse publicity, the seizure and forfeiture of products that we are attempting to import or the loss of our import privileges. The effects of these factors could render the conduct of our business in a particular country undesirable or impractical and have a negative impact on our operating results.

***We depend on sole source suppliers for some of our components, and our product availability and sales would be harmed if any of these suppliers are not able to meet our demand and alternative components are not available.***

Our products contain a variety of components, many of which are procured from single suppliers. These components include both tooled parts and industry-standard parts, many of which are also used in cellular telephone handsets. From time to time, certain components used in our products have been in short supply worldwide. If there is a shortage of any such components, we may not be able to deliver sufficient quantities of our products to satisfy demand. The cost, quality and availability of components are essential to the successful production and sale of our products. Some of these components come from sole or single source suppliers for which alternative components may not be available. If suppliers are unable to meet our demand for sole source components and if we are unable to obtain an alternative source or if the price for a substitute is prohibitive, our ability to maintain timely and cost-effective production of our products would be seriously harmed.

***We may not be able to license necessary third-party technology or it may be expensive to do so.***

From time to time, we may be required to license technology from third parties to develop new products or product enhancements. We have licensed software for use in our products from third-parties, such as QUALCOMM. The license from QUALCOMM does not have a specified term and may be terminated by us or by QUALCOMM for cause or upon the occurrence of other specified events. We cannot assure you that we will be able to maintain our third-party licenses or that additional third-party licenses will be available to us on commercially reasonable terms, if at all. The inability to maintain or obtain any third-party license required to develop new products and product enhancements could require us to obtain substitute technology of lower quality or performance standards or at greater cost which could seriously harm our competitive position, revenue and growth prospects.

***We are subject to the risks of doing business abroad, which could negatively affect our international operations and sales and our ability to obtain products from foreign manufacturers.***

All of our products are manufactured in South Korea by our sole, third-party manufacturer, LG Innotek, and many of the components used by LG Innotek in the manufacture of our products are produced outside the United States. In addition, we have international operations and sales, and a significant portion of our research and development staff is located in Canada. Our international sales accounted for approximately 23.1% of our revenue for 2003. Although our experience in marketing, selling, distributing and manufacturing our products

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and services internationally is limited, we expect to further expand our international sales and marketing activities in the future. Consequently, we are subject to certain risks associated with doing business abroad, including:

- changes in international currency exchange rates;
- changes in a specific country's or region's political or economic conditions, particularly in emerging markets, and changes in diplomatic and trade relationships;
- less effective protection of intellectual property and general exposure to different legal standards;
- trade protection measures and import or export licensing requirements;
- potentially negative consequences from changes in tax laws;
- increased expenses associated with customizing products for international countries;
- unexpected changes in regulatory requirements resulting in unanticipated costs and delays;
- longer collection cycles and difficulties in collecting accounts receivable;
- longer sales cycles;
- international terrorism;
- loss or damage to products in transit;
- international dock strikes or other transportation delays; and
- difficulty in managing widespread sales and research and development operations.

Any disruption in our ability to obtain products from our foreign manufacturer or our ability to conduct international operations and sales could have a material adverse effect on our business, financial condition and results of operations.

***Our products may contain errors or defects, which could decrease their market acceptance.***

Our products are technologically complex and must meet stringent user requirements. We must develop our software and hardware products quickly to keep pace with the rapidly changing and technologically advanced wireless communications market. Products as sophisticated as ours may contain undetected errors or defects, especially when first introduced or when new models or versions are released. Our products may not be free from errors or defects after commercial shipments have begun, which could result in the rejection of our products, damage to our reputation, lost revenue, diverted development resources, and increased customer service and support costs and warranty claims.

***We may not be able to adequately protect our intellectual property, and we could incur substantial costs defending our intellectual property from infringement or a claim of infringement.***

Our success depends in part on our proprietary technology. We rely on a combination of patents, copyrights, trademarks and trade secrets, confidentiality provisions and licensing arrangements to establish and protect our proprietary rights. We may be required to spend significant resources to monitor and police our intellectual property rights. Despite these expenditures, we may not be able to detect infringement and as a consequence we may lose our competitive position in the market. Intellectual property rights also may be unavailable or limited in some foreign countries, which could make it easier for competitors to capture market share in such countries. The unauthorized use of our technology by competitors could have a material adverse effect on our ability to sell our products in some markets.

Although we are not currently involved in any material intellectual property litigation, we may be a party to material litigation in the future either to protect our intellectual property or as a result of an alleged infringement

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of others' intellectual property. These claims and any resulting litigation could subject us to significant liability for damages or could cause our proprietary rights to be invalidated. Litigation, regardless of the merits of the claim or outcome, would likely be time-consuming and expensive to resolve and would divert management time and attention away from the operation of our business. Any potential intellectual property litigation against us could also force us to do one or more of the following:

- stop using the challenged intellectual property and refrain from selling our products or services that incorporate it;
- obtain a license to use the challenged intellectual property or to sell products or services that incorporate it, which license may not be available on reasonable terms, or at all; or
- redesign those products or services that are based on or incorporate the challenged intellectual property.

If we are forced to take any of the foregoing actions, we may be unable to manufacture and sell our products, or we may be unable to do so on terms economically favorable to us, and our business, financial condition and results of operations may be materially adversely affected.

### ***Our quarterly operating results may fluctuate in the future and may cause our stock price to decline.***

Our future quarterly operating results may fluctuate significantly and may not meet the expectations of securities analysts or investors. If this occurs, the market price of our stock would likely decline. The following factors may cause fluctuations in our operating results:

- *Decreases in revenue or increases in operating expenses.* We budget our operating expenses based on anticipated sales, and a significant portion of our sales and marketing, research and development and general and administrative costs are fixed, at least in the short term. If revenue decreases or does not grow as planned and we are unable to reduce our operating costs quickly and sufficiently, our operating results could be materially adversely affected.
- *Product mix.* The product mix of our sales affects profit margins in any given quarter. As our business evolves and the revenue from the product mix of our sales varies from quarter to quarter, our operating results will likely fluctuate.
- *New product introductions.* As we introduce new products, the timing of these introductions will affect our quarterly operating results. We may have difficulty predicting the timing of new product introductions and the market acceptance of these new products. If products and services are introduced earlier or later than anticipated, or if market acceptance is unexpectedly high or low, our quarterly operating results may fluctuate unexpectedly.
- *Lengthy sales cycle.* The length of time between the date of initial contact with a potential customer and the execution of a contract may take several months, and is subject to delays over which we have little or no control. The sale of our products is subject to delays from our customers' budgeting, approval, testing and competitive evaluation processes that typically accompany significant information technology purchasing decisions. As a result, our ability to anticipate the timing and volume of sales to specific customers is limited, and the delay or failure to complete one or more large transactions could cause our operating results to vary significantly from quarter to quarter.

Due to these and other factors, our results of operations may fluctuate substantially in the future and quarter-to-quarter comparisons may not be reliable indicators of future performance.

### ***We may not be able to develop products that comply with applicable government regulations.***

Our products must comply with government regulations. For example, in the United States, the Federal Communications Commission regulates many aspects of communications devices, including radiation of

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electromagnetic energy, biological safety and rules for devices to be connected to telephone networks. Radio frequency devices, which include our modems, must be approved under the above regulations by obtaining equipment authorization from the FCC prior to being offered for sale. Regulatory requirements in Canada, Europe, Asia and other jurisdictions must also be met. Additionally, we cannot anticipate the effect that changes in domestic or foreign government regulations may have on our ability to develop products in the future. Failure to comply with existing or evolving government regulations or to obtain timely regulatory approvals or certificates for our products could materially adversely affect our business, financial condition and results of operations.

***We may not be able to maintain and expand our business if we are not able to hire, retain and manage additional qualified personnel.***

Our success in the future depends in part on the continued contribution of our executive, technical, engineering, sales, marketing, operations and administrative personnel. In particular, the services of Peter Leparulo, our Chief Executive Officer, would be difficult to replace. Recruiting and retaining skilled personnel in the wireless communications industry, including software and hardware engineers, is highly competitive.

Although we may enter into employment agreements with members of our senior management in the future, currently none of our senior management or other key personnel are bound by employment agreements. If we are not able to attract or retain qualified personnel in the future, or if we experience delays in hiring required personnel, particularly qualified engineers, we will not be able to maintain and expand our business.

***Any acquisitions we make could disrupt our business and harm our financial condition and results of operations.***

As part of our business strategy, we intend to review, on an ongoing basis, acquisition opportunities that we believe would be advantageous to the development of our business. While we have no current agreements or plans with respect to any acquisitions, we may acquire businesses, assets, or technologies in the future. If we make any acquisitions, we could take any or all of the following actions, any one of which could adversely affect our business, financial condition and results of operations:

- issue equity securities that would dilute existing stockholders' percentage ownership;
- use a substantial portion of our available cash;
- incur substantial debt, which may not be available to us on favorable terms and may adversely affect our liquidity;
- assume contingent liabilities; and
- take substantial charges in connection with acquired assets.

Acquisitions also entail numerous other risks, including: difficulties in assimilating acquired operations, products and personnel; unanticipated costs; diversion of management's attention from other business concerns; adverse effects on existing business relationships with suppliers and customers; risks of entering markets in which we have limited or no prior experience; and potential loss of key employees from either our preexisting business or the acquired organization. We may not be able to successfully integrate any businesses, products, technologies or personnel that we might acquire in the future, and our failure to do so could harm our business and operating results.

***In the event we are unable to satisfy regulatory requirements relating to internal controls, or if these internal controls over financial reporting are not effective, our business could suffer.***

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, we will be required during 2004 to perform an evaluation of our internal controls over financial reporting and have our auditor publicly attest to such evaluation.

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We have prepared an internal plan of action for compliance, which includes a timeline and scheduled activities, although as of the date of this filing we have not yet prepared the evaluation. Compliance with these requirements is expected to be expensive and time consuming. If we fail to timely complete this evaluation, or if our auditors cannot timely attest to our evaluation, we could be subject to regulatory scrutiny and a loss of public confidence in our internal controls.

In designing and evaluating our internal controls over financial reporting, we recognize that any internal control or procedure, no matter how well designed and operated, can provide only reasonable assurance of achieving desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. While we believe that our internal controls over financial reporting currently provide reasonable assurance of achieving their control objectives, no system of internal controls can be designed to provide absolute assurance of effectiveness. See "Item 9A. Controls and Procedures" contained in this report. A material failure of internal controls over financial reporting could materially impact our reported financial results and the market price of our stock could significantly decline. Additionally, adverse publicity related to a material failure of internal controls over financial reporting would have a negative impact on our reputation and business.

***We transferred the listing of our common stock from The Nasdaq National Market to The Nasdaq SmallCap Market in 2003, which may result in lower visibility and demand for our shares.***

On April 8, 2003, we transferred the listing of our common stock to The Nasdaq SmallCap Market because we no longer met The Nasdaq National Market's minimum stockholder equity requirement of \$10 million. Companies whose common stock is listed on The Nasdaq SmallCap Market may be viewed as less prestigious, may experience lower trading volumes and are subject to fewer corporate governance requirements than companies listed on The Nasdaq National Market. In addition, we cannot assure you whether or by when we might return the listing of our common stock to the National Market.

***To the extent we enter into contracts in the future that are denominated in foreign currencies, fluctuations in exchange rates between the United States dollar and other foreign currencies may affect our operating results.***

To date, our distribution agreements in Europe and the Asia-Pacific region are denominated solely in U.S. dollars. In the event we enter into contracts in the future that are denominated in foreign currencies, we cannot assure you that we will not incur foreign currency losses or that we will enter into any hedging activities to reduce the risk of such losses or that these hedging activities will be successful.

### **Item 2. Properties**

Our principal executive offices are located in San Diego, California where we lease approximately 13,000 square feet under a lease that expires in March 2005, of which we have subleased approximately 3,000 square feet. We also lease approximately 20,000 square feet in San Diego under a lease that expires in February 2005, which has been fully subleased for the term of the lease. In addition, we lease 3,200 square feet in San Diego for distribution purposes under a lease that expires in February 2005. In Calgary, we lease approximately 42,000 square feet for our research and development organization under a lease that expires in September 2007, of which we have subleased 9,035 square feet for the duration of this lease. Currently, we are attempting to sublease an additional approximately 10,500 square feet of the Calgary facility. We also lease space in various geographic locations primarily for sales and support personnel or for temporary facilities. We believe that our existing facilities are adequate to meet our current needs and that we can renew our existing leases or obtain alternative space on terms that would not have a material impact on our financial results.

**Item 3. *Legal Proceedings***

We are from time to time party to various legal proceedings arising in the ordinary course of business. Based on evaluation of these matters and discussions with our counsel, we believe that liabilities arising from or sums paid in settlement of these matters will not have a material adverse effect on the consolidated results of our operations or financial position.

**Item 4. *Submission of Matters to a Vote of Security Holders***

No matters were submitted to a vote of our stockholders during the fourth quarter of 2003.

**PART II****Item 5. Market for Registrant's Common Equity and Related Stockholder Matters**

Since April 8, 2003, our common stock has been traded on The Nasdaq SmallCap Market under the symbol "NVTL." Prior to April 8, 2003, our common stock was listed on The Nasdaq National Market. There is no public trading market for either our Series A convertible preferred stock or our Series B convertible preferred stock. The following table sets forth, for the periods indicated, the high and low sale prices of our common stock as reported on Nasdaq, without retail mark-up, mark-down or commissions and may not necessarily represent actual transactions.

	<u>High</u>	<u>Low</u>
<b>2003</b>		
First quarter	\$ 1.33	\$0.60
Second quarter	\$ 4.00	\$0.82
Third quarter	\$ 7.45	\$2.40
Fourth quarter	\$ 7.00	\$4.90
<b>2002</b>		
First quarter	\$25.50	\$9.15
Second quarter	\$12.75	\$1.65
Third quarter	\$ 6.00	\$1.50
Fourth quarter	\$ 3.45	\$0.90

On March 2, 2004 the closing price per share of our common stock was \$18.11, as reported by Nasdaq. At March 2, 2004 there were approximately 146 holders of record of our common stock, three holders of record of our Series A convertible preferred stock and six holders of record of our Series B convertible preferred stock. No cash dividends were declared or paid in 2003 on any shares of our capital stock.

We currently intend to retain all available funds for use in our business, and do not anticipate paying any cash dividends in the foreseeable future. Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial condition and future prospects and other factors the board of directors may deem relevant.

**Recent Sales of Unregistered Securities**

In September and December of 2003, we issued and sold 804,167 and 402,083 shares of our common stock, respectively, pursuant to the exercise of common stock purchase warrants held by two investors who participated in the private placement transactions that we completed on March 12 and May 14, 2003. The exercise price per share was \$0.70 and each holder delivered the required cash consideration to us at the time of exercise. At the time of each common stock issuance, the shares were restricted securities whose resale was not then subject to an effective registration statement.

We believe that each issuance described immediately above was exempt from the registration requirements of the Securities Act of 1933, as amended (Securities Act), by virtue of Section 4(2) thereof and Rule 506 of Regulation D promulgated thereunder. Neither the offering nor the securities issued in connection therewith involved any underwriter. Moreover, neither the offering nor the common stock issuances involved any general solicitation or advertising, and we attached appropriate legends to the stock certificates that we consequently issued. Prior to issuance, each offeree executed and delivered to us an investor questionnaire on which each represented to us that it was an accredited investor within the meaning of Rule 501 of Regulation D and that each was acquiring the shares for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof.

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**Item 6. Selected Consolidated Financial Data**

The following selected consolidated financial data should be read in conjunction with our Consolidated Financial Statements and the related notes and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” appearing elsewhere in this Form 10-K. The selected consolidated statement of operations data presented below for each of the years ended December 31, 2003, 2002 and 2001, and the consolidated balance sheet data at December 31, 2003 and 2002 are derived from our Consolidated Financial Statements that have been included elsewhere in this Form 10-K. The consolidated statement of operations data for the years ended December 31, 2000 and 1999 and consolidated balance sheet data at December 31, 2001, 2000, and 1999 are derived from audited consolidated financial statements not included in this Form 10-K.

	Years Ended December 31,				
	2003	2002	2001	2000	1999
	(in thousands, except share and per share data)				
<b>Consolidated Statement of Operations Data:</b>					
Revenue	\$ 33,815	\$ 28,872	\$ 43,643	\$ 61,154	\$ 9,556
Cost of revenue	27,891	26,894	77,439	59,588	11,955
Gross margin (loss)	5,924	1,978	(33,796)	1,566	(2,399)
<b>Operating expenses:</b>					
Research and development	5,987	13,416	20,836	13,488	3,717
Sales and marketing	2,558	4,640	12,262	18,262	4,480
General and administrative	3,647	5,717	7,837	5,027	4,443
Restructuring and impairment charges	828	2,650	7,050	—	—
Amortization of deferred stock compensation	738	3,556	10,360	12,833	220
Total operating expenses	13,758	29,979	58,345	49,610	12,860
Loss from operations	(7,834)	(28,001)	(92,141)	(48,044)	(15,259)
Other income (expense) net	(3,804)	(317)	1,264	1,120	(3,210)
Net loss	\$ (11,638)	\$ (28,318)	\$ (90,877)	\$ (46,924)	\$ (18,469)
Net loss applicable to common stockholders	\$ (16,030)	\$ (53,481)	\$ (91,038)	\$ (50,776)	\$ (19,873)
<b>Net loss per common share:</b>					
Basic and diluted	\$ (2.05)	\$ (10.47)	\$ (25.11)	\$ (48.65)	\$ (30.64)
Weighted average shares outstanding	7,817,539	5,106,681	3,626,258	1,043,605	648,561
	December 31,				
	2003	2002	2001	2000	1999
	(in thousands)				
<b>Consolidated Balance Sheet Data:</b>					
Cash and cash equivalents and restricted cash	\$ 4,577	\$ 1,676	\$ 29,229	\$ 66,826	\$ 25,455
Working capital (deficiency)	2,258	(2,143)	15,227	67,479	15,769
Total assets	24,421	24,047	59,909	110,824	38,118
Long-term obligations, net of current portion	—	38	4,171	205	106
Convertible and redeemable preferred stock	354	665	161	—	43,805
Stockholders’ equity (deficit)	8,636	6,501	25,427	79,222	(31,128)

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

*The following discussion of our consolidated financial condition and results of operations should be read in conjunction with our Consolidated Financial Statements and related notes included elsewhere in this report. This report contains certain forward-looking statements relating to future events or our future financial performance. These statements are subject to risks and uncertainties which could cause actual results to differ materially from those discussed in this report. You are cautioned not to place undue reliance on this information which speaks only as of the date of this report. We are not obligated to publicly update this information, whether as a result of new information, future events or otherwise, except to the extent we are required to do so in connection with our obligation to file reports with the SEC. For a discussion of the important risks related to our business and future operating performance, see the discussion under the caption "Item 1. Business—Risks Related to Our Business" and under the caption "Factors Which May Influence Future Results of Operations" below. In light of these risks, uncertainties and assumptions, the forward-looking events discussed in this report might not occur.*

**Overview and Background**

We are a provider of wireless broadband access solutions for the worldwide mobile communications market. Our broad range of products includes wireless data modems and software for laptop PCs, embedded wireless modules for original equipment manufacturers, or OEMs, and ruggedized wireless data modems for public safety and telemetry applications. Through the integration of our hardware and software, our products are designed to operate on a majority of global wireless networks and provide mobile subscribers with secure and convenient access to data including corporate, public and personal information through the Internet and enterprise networks. We also offer software engineering and design services to our customers to facilitate the use of our products.

Historically, we have incurred substantial costs to develop our technology and products, and to recruit and train personnel for our product development and sales and marketing departments. In the past, our operating expenses have exceeded the revenue generated by our products and services. As a result, we have incurred losses in each quarter since inception. During 2003, we incurred a net loss applicable to common shareholders of \$16.0 million (see reconciliation of net loss to net loss applicable to common shareholders in note 7 to our audited consolidated financial statements included in this report). As of December 31, 2003, we had an accumulated deficit of \$246.4 million and working capital of \$2.3 million.

Since our inception in 1996, we have been focused on the development and commercialization of technologies that allow for wireless access to data. We expanded our operations in advance of the launch of several new products in the late 1990s through 2001. Beginning in 2001, in response to the decline in the telecommunications industry, we implemented an operational and organizational restructuring to increase operating efficiency and conserve working capital. These restructuring activities included facility consolidations, reduction of employee staff, consultants and temporary labor and critical assessments of asset impairment and obsolete inventory. For 2003, 2002 and 2001, we incurred restructuring and impairment charges of approximately \$800,000, \$2.7 million and \$7.1 million, respectively.

Beginning in early 2003, we also began aggressively pursuing the development of innovative 3G products, refocused our research and development efforts on sales driven customer needs and focused our sales, marketing and distribution efforts on large wireless operators and related companies.

These efforts have contributed to an increase in our gross margin from a negative \$33.8 million for 2001 to a positive gross margin of \$5.9 million in 2003, and an improvement in our gross margin as a percentage of total revenue from negative 77.4% in 2001 to positive 17.5% in 2003. We also reduced our operating loss from \$92.1 million for 2001 to an operating loss of \$7.8 million for 2003.

## Factors Which May Influence Future Results of Operations

We intend to continue executing on a plan to improve our operating results and financial condition. The plan includes strengthening sales initiatives, improving gross margins and continuing to cut other costs as a percentage of sales. We have entered into and expect to continue to enter into new customer contracts for the development and supply of our products and this may place significant demands on our resources.

*Revenue.* We believe that our revenue growth will be influenced largely by the speed and breadth of the increase in demand for wireless access to data through the use of next generation networks including demand for 3G products and 3G data access services, particularly in Europe, North America and Asia, customer acceptance for our new products that address these markets, and our ability to meet customer demand. Factors that could potentially affect customer demand for our products include the following:

- demand for broadband access to networks;
- use of the Internet;
- rate of change to new products;
- loss of significant customers;
- drop in demand for CDMA and UMTS/GPRS products; and
- change in technologies.

We began shipping our first 3G products in December 2003 and anticipate introducing additional 3G products in 2004. In the future, we also expect to enter into customer contracts for development services, but not at significant levels in relation to total revenue.

*Cost of Revenue.* We currently outsource all of our manufacturing operations to LG Innotek. All costs associated with LG Innotek are included in our cost of revenue. Cost of revenue also includes warranty costs, royalty payments based on a percentage of revenue, operations group expenses, costs related to development services and costs related to inventory adjustments, including for excess and obsolete inventory. Inventory adjustments are impacted primarily by demand for our products, which is influenced by the factors discussed above. During 2003, 2002, and 2001, we recorded inventory write-downs of \$2.0 million, \$2.5 million, and \$16.2 million, respectively, due to the decrease in demand for our products. During 2002, we sold \$1.5 million in inventory that had previously been written down. We expect to continue to outsource our manufacturing operations, and as our business grows we expect our manufacturing activity to increase.

*Operating Expenses.* Many of our products target wireless operators and other customers in Europe, North America and Asia. If these markets continue to grow as expected, we will likely develop new products to serve these markets, resulting in increased research and development expenses associated with such new product development. We have in the past and expect to continue in future periods to incur these expenses in periods prior to recognizing revenue from these contracts. In addition, the portion of our revenue derived from international sales may increase, requiring an expansion of our sales and marketing efforts in these markets.

## Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues, expenses and disclosures of contingent assets and liabilities. Actual results could differ from these estimates. Significant estimates include inventory adjustments for excess and obsolete balances, allowance for doubtful accounts receivable, the use of option pricing models to establish values of equity instruments issued in non-monetary transactions with non-employees, useful lives and realizability of long-lived assets and estimates for costs recorded in restructuring accruals.

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*Revenue Recognition.* Our revenue is generated from the sale of our broadband wireless access solutions to wireless operators, OEM customers, VARs and distributors. Revenue from product sales services is recognized upon the latest of transfer of title or shipment of the product to the customer. We record deferred revenue for cash payments received from customers in advance of product shipments. We establish reserves for estimated product returns allowances in the period in which revenue is recognized. In estimating our future product returns, we consider various relevant factors, including our stated return policies and practices and our historical trends. We believe that our revenue recognition policy is consistent with SEC guidance and in accordance with accounting principles generally accepted in the United States.

For our fixed price development services contracts, we recognize revenue as services are rendered using labor output measures or the achievement of milestones as indicators of progress. Total estimated costs are based on management's assessment of costs to complete the project including periodic assessments of the progress achieved and the costs expended to date. To the extent that our estimated costs materially change, our revenue and profit recorded under the associated contract is adjusted accordingly. If total costs of completion are estimated to exceed the contract value, a loss is recognized in the period the loss is identified.

During 2003, we entered into a joint development agreement containing multiple elements with one of our customers including development services and product shipments. Accordingly, we have separated the deliverables into units of accounting and allocated arrangement consideration on these deliverables in accordance with the provisions of Emerging Issues Task Force (EITF) Issue No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables." In accordance with EITF Issue No. 00-21, \$6.2 million in cash payments received in 2003 were deferred and will be recognized in revenue when products are shipped or as development services are performed in the future.

*Allowance for Doubtful Accounts.* We provide a reserve against our receivables for estimated losses that may result from our customers' inability to pay. We determine the amount of the reserve by analyzing known uncollectible accounts, aged receivables, economic conditions, historical losses, changes in customer payment cycles, and our customer's credit-worthiness. Amounts later determined and specifically identified to be uncollectible are charged or written off against this reserve. To minimize the likelihood of uncollectibility, we review our customers' credit-worthiness periodically based on independent credit reporting services, our experience with our customers and the economic condition of our customers' industries. Material differences may result in the amount and timing of expense for any period if we were to make different judgments or utilize different estimates. If the financial condition of our customers deteriorates resulting in an impairment of their ability to make payments, additional allowances might be required. We have not experienced significant variances in the past between our estimated and actual doubtful accounts and anticipate that we will be able to continue to make reasonable estimates in the future.

*Inventory Adjustments.* Inventories are stated at lower of cost (first-in, first-out method) or market. We review the components of our inventory and our inventory purchase commitments on a regular basis for excess, obsolete and impaired inventory based on estimated future usage and sales. Write-downs in inventory value depend on various items, including factors related to customer demand as discussed under "Revenues" above, economic and competitive conditions, technological advances or new product introductions by us or our customers that vary from our current expectations.

We believe that the estimates we use in calculating the inventory reserve are reasonable and properly reflect the risk of excess and obsolete inventory. If customer demand for our inventory is substantially different from our estimates, adjustments to our inventory reserve may be required, which could have a material adverse effect on our consolidated financial statements.

*Warranty Costs.* We accrue warranty costs based on estimates of future warranty related repairs or rework of products. Our warranty policy generally provides one- or two-year coverage for products following the date of purchase. Our policy is to accrue the estimated cost of warranty coverage at the time the sale is recorded. In

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estimating our future warranty obligations we consider various relevant factors, including the historical frequency of claims and the cost to replace or repair products under warranty. We have not experienced significant variances in the past between our estimated and actual warranty costs. We have not experienced significant warranty expenses to date. Future expenses could be different, depending on the quality of our product design and manufacturing quality.

*Valuation of Intangible and Long-Lived Assets.* We periodically assess the impairment of intangible and long-lived assets which requires us to make assumptions and judgments regarding the carrying value of these assets. We consider assets to be impaired if: the carrying value may not be recoverable based upon our assessment of the following events or changes in circumstances; the asset's ability to continue to generate income from operations and positive cash flow in future periods; loss of legal ownership or title to the asset; significant changes in our strategic business objectives and utilization of the asset; or significant negative industry or economic trends.

Our assessment includes comparing the carrying amounts of intangible and long-lived assets to the fair value, which is determined using a discounted cash flow model. This model requires estimates of our future revenues, profits, capital expenditures, working capital and other relevant factors. We estimate these amounts by evaluating our historical trends, current budgets, operating plans and other industry data. If the assets are considered to be impaired, the impairment charge recognized is the amount by which the asset's carrying value exceeds its fair value. No impairment was recorded in 2003. During 2002, we recorded an impairment charge in the amount of \$870,000 for a software license that was no longer being used as a result of our decision not to pursue further development of the technology related to this license.

The timing and frequency of our impairment test is based on an ongoing assessment of triggering events that could reduce the fair value of our long-lived assets below their carrying value. We will continue to monitor our intangible and long-lived asset balances and conduct formal tests on at least an annual basis or earlier when impairment indicators are present. We believe that the assumptions and estimates we used to value intangible and long-lived assets were appropriate based on the information available to management. The majority of our long-lived assets are being amortized or depreciated over relatively short periods, typically three to five years. This reduces the risk of large impairment charges in any given period. However, most of these assets are associated with technology that changes rapidly and such changes could have an immediate impact on our impairment analysis.

*Accrued Restructuring Related Costs.* We estimate amounts for direct costs of our expenses and liabilities related to our restructurings in accordance with the EITF Issue 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (Including Certain Costs Incurred in a Restructuring)." For restructurings initiated after December 31, 2002, we apply the provisions of SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." The restructuring accrual requires the use of estimates including the amounts of future lease obligations offset by estimated sublease income. Due to our inability to sublease certain facilities, we revised our estimates of future sublease income and recorded additional restructuring charges in 2003, 2002 and 2001. We believe that our assumptions and estimates utilized in the determination of the restructuring accrual were appropriate based on the information available to management. Future revisions, if any, in our estimates of the potential costs or sublease income could materially impact our results of operations and financial position.

[Table of Contents](#)**Results of Operations**

The following table sets forth our consolidated statements of operations expressed as a percentage of revenue for the periods indicated.

	Years Ended December 31,		
	2003	2002	2001
	(as a percent of revenue)		
Revenue	100.0%	100.0%	100.0%
Cost of revenue	82.5	93.1	177.4
Gross margin	17.5	6.9	(77.4)
Operating expenses:			
Research and development	17.7	46.5	47.7
Sales and marketing	7.6	16.1	28.1
General and administrative	10.8	19.8	18.0
Restructuring and impairment charges	2.4	9.2	16.2
Amortization of deferred stock compensation	2.2	12.3	23.7
Total operating expenses	40.7	103.9	133.7
Loss from operations	(23.2)	(97.0)	(211.1)
Interest income	0.1	1.0	3.7
Interest expense	(11.6)	(1.9)	(0.8)
Other, net	0.3	—	—
Net loss	(34.4)%	(97.9)%	(208.2)%

**Year Ended December 31, 2003 Compared to Year Ended December 31, 2002**

**Revenue.** Revenue for 2003 increased \$4.9 million, or 17.0%, to \$33.8 million compared to \$28.9 million for 2002. The increase was attributable to increased development services revenue of approximately \$4.0 million and increased product sales of \$900,000. The overall increase in product sales was attributable primarily to higher sales volumes resulting from our introduction of new products and the increased demand for wireless products and wireless access services during 2003. Total revenue recognized for development services during 2003 and 2002 amounted to \$5.4 million and \$1.4 million, respectively. In 2003, development services revenue increased as a percentage of total revenue due to specific development projects related to the development of our new UMTS products. We do not expect development services revenue to represent a significant percentage of total revenue in the foreseeable future.

**Cost of revenue.** Cost of revenue for 2003 increased \$1.0 million, or 3.7%, to \$27.9 million compared to \$26.9 million for 2002. The increase in cost of revenue was attributable to a \$2.8 million increase in costs associated with development services and an increase in product royalty costs of approximately \$1.2 million, offset by a decrease in manufacturing overhead costs of approximately \$1.7 million, a decrease in cost of product sales of approximately \$700,000 and a decrease in charges for excess and obsolete inventory of approximately \$500,000. Cost of revenue related to products increased as we sold more products, but our costs of revenue increased at a lower rate than our revenue due to our reduced manufacturing costs. Total cost of revenue for development services during 2003 and 2002 amounted to \$4.3 million and \$1.4 million, respectively.

**Gross margin.** Gross margin for 2003 increased by \$3.9 million, to \$5.9 million compared to \$2.0 million for 2002. The increase was primarily attributable to the increase in sales of products with higher margin, an increase in margin on development services revenue and the decrease in manufacturing overhead costs discussed above. Gross margin as a percent of revenue increased to 17.5% for 2003 compared to 6.9% for 2002. The increase in gross margin as a percentage of revenue was primarily attributable to sales of products with higher margin in 2003 as compared to 2002 and higher margin on development services revenue.

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**Research and development expenses.** Our research and development expenses for 2003 decreased \$7.4 million, or 55.0%, to \$6.0 million compared to \$13.4 million for 2002. The decrease primarily was attributable to a reduction in research and development personnel, resulting in decreases in salary and related expenses of approximately \$2.0 million, outside consulting services of approximately \$1.0 million, and supplies and equipment, travel and overhead of approximately \$2.0 million, in the aggregate. The remaining decrease of approximately \$2.3 million was attributable to the reassignment of research and development personnel to customer funded development contracts. Accordingly, \$2.3 million is included in cost of revenue for 2003.

**Sales and marketing expenses.** Sales and marketing expenses for 2003 decreased \$2.1 million, or 45.0%, to \$2.6 million compared to \$4.6 million for 2002. The decrease was a result of a reduction in sales and marketing personnel during 2003, which reduced salary and related expenses by approximately \$700,000. The decrease in personnel also resulted in related cost savings of \$1.0 million attributable to a reduction in travel, equipment, consulting and other outside services and overhead. Additionally, advertising and marketing costs were reduced by approximately \$400,000.

**General and administrative expenses.** General and administrative expenses for 2003 decreased \$2.1 million, or 36.0%, to \$3.6 million compared to \$5.7 million for 2002. The decrease was primarily attributable to a decrease in professional and outside consultant fees of approximately \$1.5 million and a reduction in personnel, resulting in a decrease of approximately \$600,000 primarily attributable to salary and related expenses, travel and overhead.

**Restructuring and impairment charges.** Restructuring and impairment charges for 2003 were \$800,000 compared to \$2.7 million for 2002. The 2003 charges were comprised of severance payments and other related termination expenses of \$300,000, and facility consolidation and lease obligation costs of approximately \$500,000. The costs for 2002 were comprised of severance and termination expenses of \$800,000, facility consolidation and lease obligation costs of approximately \$1.0 million and write-offs related to asset impairments of approximately \$1.2 million.

**Amortization of deferred stock compensation.** Amortization of deferred stock compensation for 2003 decreased \$2.8 million, or 79.0%, to \$700,000 compared to \$3.6 million for 2002. This decrease was the result of our use of the attribution method of accounting to amortize deferred compensation associated with equity compensation awards in 2000 which results in the majority of this amortization being recognized in the earlier years following the equity grant. The decrease also reflected a reduction in the unamortized portion of the deferred compensation attributable to previously awarded stock options cancelled during 2003 and 2002, totaling \$850,000 and \$1.1 million, respectively.

**Interest income.** Interest income for 2003 decreased by approximately \$177,000, or 80.0%, to \$44,000 compared to \$221,000 for 2002. The decrease was primarily due to a reduction in the average cash balances during the year.

**Interest expense.** Interest expense increased by \$3.4 million to \$3.9 million compared to \$538,000 for 2002. The increase was attributable to interest of \$3.7 million associated with the convertible notes issued and converted in 2003, net of a decrease in bank finance charges and interest on capital leases. The interest expense associated with the convertible notes was a result of the proceeds of the convertible notes allocated to the beneficial conversion feature and related warrants. Because all the convertible notes were converted into Series B preferred stock during 2003, we recognized interest expense equal to the remaining value of the beneficial conversion feature and related warrants, which otherwise would have been ratably accreted over the term of the notes.

**Net loss.** The net loss for 2003 decreased \$16.7 million, or 59.0%, to \$11.6 million compared to \$28.3 million for 2002 for the reasons stated above.

**Year Ended December 31, 2002 Compared to Year Ended December 31, 2001**

**Revenue.** Revenue for 2002 decreased \$14.8 million, or 33.9%, to \$28.9 million compared to \$43.6 million for 2001. The decrease in revenue for 2002 was attributable to lower product sales of \$16.0 million and a \$1.4 million product return of GPRS units from a European distributor, partially off-set by an increase in non-recurring engineering revenue of \$1.2 million, and \$1.4 million received in connection with the settlement of claims related to the bankruptcy of Metricom, one of our former customers. The overall decrease in product sales reflected lower volumes of sales attributable to the decline in demand for wireless products and wireless access services over the prior period.

**Cost of revenue.** Our cost of revenue for 2002 decreased \$50.5 million, or 65.3%, to \$26.9 million compared to \$77.4 million for 2001. Of the total decrease, \$33.5 million was attributable to decreased charges for excess and obsolete inventory, \$13.1 million was attributable to reduced product sales, and \$3.9 million was attributable to cost savings related to reductions in our manufacturing capacity.

**Gross margin.** Our gross margin for 2002 increased by \$35.8 million, to \$2.0 million compared to negative \$33.8 million for 2001. The increase in gross margin was attributable primarily to the lower cost of revenue for 2002 compared to 2001 as described above.

**Research and development expenses.** Our research and development expenses for 2002 decreased \$7.4 million, or 35.6%, to \$13.4 million compared to \$20.8 million for 2001. The decrease primarily was attributable to the continued restructuring of our research and development program, including a reduction in research and development personnel, resulting in a decrease in salary and related expenses of approximately \$3.4 million, outside consulting services of approximately \$1.0 million, and supplies and equipment, travel and overhead of approximately \$4.3 million, in the aggregate. An additional \$800,000 of the decrease was attributable to the reassignment of research and development personnel to customer funded development contracts. Accordingly, \$800,000 is included in cost of revenue for 2002.

**Sales and marketing expenses.** Sales and marketing expenses for 2002 decreased \$7.6 million, or 62.2%, to \$4.6 million compared to \$12.3 million for 2001. The decrease was attributable to our continued restructuring, including a reduction in sales and marketing personnel, resulting in decreased in salary and related expenses of approximately \$4.5 million and a decrease in advertising and marketing costs of approximately \$1.1 million. The decrease in personnel also resulted in related costs savings of \$2.0 million attributable to travel, equipment, consulting and other outside services and overhead.

**General and administrative expenses.** General and administrative expenses for 2002 decreased \$2.1 million, or 27.1%, to \$5.7 million compared to \$7.8 million for 2001. The decrease was attributable to our continued restructuring, comprised primarily of a reduction in personnel, resulting in a decrease of approximately \$2.5 million related to salaries. This decrease was offset by a net increase in other administrative expenses of \$400,000 principally related to allocable overhead expense.

**Restructuring and impairment charges.** Restructuring and impairment charges for 2002 were \$2.7 million compared to \$7.1 million for 2001. The costs for 2002 were comprised of severance payments and other related termination expenses of approximately \$800,000, facility consolidation and lease obligation costs of approximately \$1.0 million and write-offs attributable to asset impairments of approximately \$900,000. The costs for 2001 were comprised of severance payments and other related termination expenses of approximately \$2.3 million, lease obligation costs on closed facilities of approximately \$2.7 million and write-offs attributable to asset impairments of approximately \$2.2 million.

**Amortization of deferred stock compensation.** Amortization of deferred stock compensation for 2002 decreased \$6.8 million or 65.7% to \$3.6 million compared to \$10.4 million for 2001. This decrease was the result of our use of the attribution method of accounting to amortize deferred compensation associated with equity compensation awards in 2000, and a reduction in the unamortized portion of the deferred compensation

attributable to previously awarded stock options cancelled during 2001 and 2002, totaling \$1.5 million and \$1.1 million, respectively.

**Interest income.** Interest income for 2002 decreased by approximately \$1.4 million, or 86.2%, to approximately \$200,000 compared to \$1.6 million for 2001. The decrease was primarily due to a reduction in the cash balances in 2002 compared to 2001.

**Interest expense.** Interest expense increased by approximately \$210,000 to \$540,000 compared to approximately \$330,000 for 2002. The increase is attributable to an increase in bank finance charges and interest on capital leases.

**Net loss.** The net loss for 2002 decreased \$62.6 million, or 69.0%, to \$28.3 million compared to \$90.9 million for 2001 for the reasons stated above.

### **Liquidity and Capital Resources**

We have incurred significant costs to develop our technologies and products. These costs have exceeded total revenue and we have sustained substantial losses from operations in each period since our inception and have used substantially all of our available cash resources to fund operations. During 2003, we incurred a net loss of \$11.6 million. As of December 31, 2003, we had an accumulated deficit of \$246.4 million, working capital of \$2.3 million and approximately \$3.9 million in cash and cash equivalents.

We have funded our operations primarily through sales of our equity and debt securities, and to a lesser extent through capital lease arrangements and borrowings under our line of credit. To date, net proceeds from these transactions have totaled approximately \$168.9 million, including net proceeds from our initial public offering in the fourth quarter of 2000 of \$57.2 million, net proceeds of approximately \$25.9 million from the private placement of our Series A redeemable convertible preferred stock in December 2001, net proceeds of approximately \$2.4 million from the common stock private placement in September 2002, and net proceeds of \$2.6 million from the private placement of Series B convertible preferred stock in 2003, including the related convertible notes and common stock purchase warrants.

During 2003, we received aggregate proceeds of approximately \$2.5 million in connection with the issuance of 2,370,732 shares of common stock upon the exercise of certain outstanding warrants.

#### *Historical Cash Flows*

**Net cash used in operating activities.** Net cash used in operating activities decreased by \$28.3 million to approximately \$400,000 for 2003 from approximately \$28.7 million for 2002. This decrease was primarily attributable to the reduction in our net loss from \$28.3 million in 2002 compared to \$11.6 million in 2003 and an increase of \$5.2 million in advanced payments received and recorded in deferred revenue. The 2003 net loss includes a \$3.7 million non-cash accretion of interest expense on the convertible notes and a \$700,000 non-cash charge for deferred stock-based compensation expense related to stock options issued to employees during 2000. This increase was offset by an increase in accounts receivable of \$2.3 million, an increase in restricted cash of approximately \$500,000 and a decrease in inventory purchase commitments of approximately \$500,000.

**Net cash used in investing activities.** Net cash used in investing activities for 2003 was approximately \$300,000, consistent with the net cash used in investing activities in 2002. This net activity was the result of an increase of \$321,000 related to the proceeds from the sale of property and equipment and reduced capitalized software development costs of \$100,000, offset by an increase in the purchase of licensed technologies of approximately \$400,000.

**Net cash provided from financing activities.** Net cash provided by financing activities during 2003 was \$3.0 million, compared to \$1.5 million for 2002. The cash provided from financing activities in 2003 was

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primarily attributable to the net proceeds of \$1.5 million from the private placement of our Series B preferred stock and related common stock purchase warrants, the private placement of \$1.1 million of notes convertible into shares of Series B preferred stock and related common stock purchase warrants, and proceeds from the exercise of common stock options and warrants of \$2.8 million.

### *Current Sources of Capital and Liquidity*

As of December 31, 2003, we had working capital of \$2.3 million and approximately \$3.9 million in cash and cash equivalents. In January 2004, we completed the private placement of 1,142,855 shares of common stock and common stock purchase warrants resulting in net proceeds of approximately \$7.5 million.

We are party to an accounts receivable purchase facility with a bank which allows us to borrow up to the lesser of \$6.7 million or 75.0% of certain eligible accounts receivable balances. This facility bears interest at 1.5% per month when utilized. The facility is secured by substantially all of our assets. As of December 31, 2003, no borrowings were outstanding under this facility. The amount available under this facility at December 31, 2003 was approximately \$6.3 million. The facility expires in November 2004.

### *Contractual Obligations and Commercial Commitments*

The following table summarizes our contractual obligations and other commitments at December 31, 2003, and the effect such obligations could have on our liquidity and cash flow in future periods:

	Payments Due by Fiscal Year					Total
	2004	2005	2006	2007	Thereafter	
Capital lease and other obligations	\$ 84,000	\$ —	\$ —	\$ —	\$ —	\$ 84,000
Operating leases	1,195,000	751,000	626,000	469,000	—	3,041,000
Committed purchase orders	6,820,000	—	—	—	—	6,820,000
<b>Total contractual cash obligations</b>	<b>\$ 8,099,000</b>	<b>\$ 751,000</b>	<b>\$ 626,000</b>	<b>\$ 469,000</b>	<b>\$ —</b>	<b>\$ 9,945,000</b>

### *Other Liquidity Needs*

During the next twelve months we plan to incur approximately \$3.0 million to \$5.0 million for the acquisition of additional licenses and for capital expenditures. In addition, certain of our operating leases related to consolidated facilities obligate us to pay an aggregate of approximately \$1.2 million over the next four years.

The following table displays the activity and balances of the restructuring accrual from January 1, 2002 to December 31, 2003:

	Employee Termination	Facility Consolidation	Asset Impairments	Total
<b>2002</b>				
Balance—January 1, 2002	\$ 184,000	\$ 1,215,000	\$ 365,000	\$ 1,764,000
Charges	778,000	1,002,000	870,000	2,650,000
Cash payments	(867,000)	(981,000)	—	(1,848,000)
Asset impairments	—	—	(1,235,000)	(1,235,000)
<b>Balance—December 31, 2002</b>	<b>\$ 95,000</b>	<b>\$ 1,236,000</b>	<b>\$ —</b>	<b>\$ 1,331,000</b>
<b>2003</b>				
Charges	\$ 336,000	\$ 492,000	\$ —	\$ 828,000
Cash payments	(431,000)	(597,000)	—	(1,028,000)
Foreign exchange loss	—	91,000	—	91,000
<b>Balance—December 31, 2003</b>	<b>\$ —</b>	<b>\$ 1,222,000</b>	<b>\$ —</b>	<b>\$ 1,222,000</b>

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Our outstanding shares of 6.5% Series A preferred stock and 8.0% Series B preferred stock do not require the payment of cash dividends. Our Series A preferred stock includes a redemption feature effective on the seventh anniversary of its issuance (December 2008) and each of our Series A preferred stock and Series B preferred stock is redeemable upon a change of control of the Company, including the acquisition by a person or group of beneficial ownership of more than 50.0% of our voting power. However, our authorized capital includes unissued “blank check” preferred stock, the issuance of which may be approved by our board of directors without the prior consent of our stockholders and which can be used to effectively prevent a change of control. As a result, we do not expect to redeem any of our Series A or Series B preferred stock in the foreseeable future. However, in the event our board of directors approves a merger or does not otherwise act to prevent a change of control through the use of our authorized and unissued preferred stock, the redemption features could be triggered. As of December 31, 2003, our total redemption obligation would have equaled \$6.0 million.

We believe that our available cash reserves, including net proceeds of approximately \$7.5 million received in January 2004 in connection with our recent private placement, together with our budgeted operating cash flows, will be sufficient to fund operations, including the expansion of our sales and marketing team, the further development of our new products and the related increase in our general and administrative expenses, and to satisfy our working capital requirements and anticipated capital expenditures for the next twelve months. We expect that one of our significant sources of funds in the future will be our operating cash flow. Our future revenue is dependent on us fulfilling our commitments in accordance with agreements with a small number of major customers. Our liquidity could be impaired if there is any interruption to our business operations or a failure to generate additional revenue from new or existing products.

### **Backlog**

We believe that backlog is not a meaningful indicator of our future business prospects due to the large volume of products delivered to wireless operators, who in turn sell our products to their customers, and our dependency on evolving wireless network standards. Therefore, we believe that backlog information is not material to an understanding of our overall business.

### **New Accounting Pronouncements**

In May 2003, the Financial Accounting Standards Board (FASB) issued SFAS No. 150 “Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity.” SFAS No. 150 changes the accounting for certain financial instruments that, under previous guidance, could be classified as equity or “mezzanine” equity. SFAS No. 150 requires those instruments to be classified as liabilities (or assets in some circumstances) in the statement of financial position. Further, SFAS No. 150 requires disclosure regarding the terms of those instruments and settlement alternatives. The guidance in SFAS No. 150 is generally effective for all financial instruments entered into or modified after May 31, 2003, and is otherwise effective at the beginning of the first interim period beginning after June 15, 2003. For financial instruments created before the issuance date of SFAS No. 150 and still existing at the beginning of the interim period of adoption, transition shall be achieved by reporting the cumulative effect of a change in an accounting principle by initially measuring the financial instruments at fair value or other measurement attribute required by this statement. The adoption of SFAS No. 150 did not have any impact on our financial position or results of operations.

In April 2003, the FASB issued SFAS No. 149, “Amendment of Statement 133 on Derivative Instruments and Hedging Activities.” This statement amends and clarifies the financial accounting and reporting requirements, originally established in SFAS No. 133, for derivative instruments and hedging activities. SFAS No. 149 provides greater clarification of the characteristics of a derivative instrument so that contracts with similar characteristics will be accounted for consistently. This statement is effective for contracts entered into or modified after June 30, 2003, as well as for hedging relationships designated after June 30, 2003, excluding certain implementation issues that have been effective prior to this date under SFAS No. 133. The adoption of this statement has not had any impact on our operating results or financial position.

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In November 2002, the EITF issued EITF Issue No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables." EITF Issue No. 00-21 addresses how to determine whether a revenue arrangement involving multiple deliverables contains more than one unit of accounting for the purposes of revenue recognition and how the revenue arrangement consideration should be measured and allocated to the separate units of accounting. EITF Issue No. 00-21 applies to revenue arrangements entered into after June 15, 2003. We adopted the provisions of EITF Issue No. 00-21 as of July 1, 2003 and have applied the provisions to our subsequent Joint Development and Supply Agreements.

In November 2002, the FASB issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness to Others, an interpretation of FASB Statements No. 5, 57 and 107 and a rescission of FASB Interpretation No. 34." This Interpretation elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under guarantees issued. The Interpretation also clarifies that a guarantor is required to recognize, at inception of a guarantee, a liability for the fair value of the obligation undertaken. The initial recognition and measurement provisions of the Interpretation are applicable to guarantees issued or modified after December 31, 2002 and did not have a material effect on our consolidated financial statements. The disclosure requirements are effective for financial statements of interim or annual periods ending after December 15, 2002.

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46), which addresses the consolidation of certain entities (variable interest entities, or VIE's) in which an enterprise has a controlling financial interest through other than voting interests. FIN 46 requires that a variable interest entity be consolidated by the holder of the majority of the expected risks and rewards associated with the activities of the variable interest entity. FIN 46 was effective for VIE's entered into prior to February 1, 2003 in periods beginning after June 15, 2003. The adoption of FIN 46 did not have a material impact on our consolidated financial condition or results of operations. In January 2004, the FASB issued a revision to FIN 46 (FIN 46R), to clarify some requirements and add new scope exceptions. The revised guidance is effective for the first reporting period beginning after December 15, 2003. The adoption of the provisions of FIN 46R is not expected to have any impact on our consolidated financial condition or results of operations.

### **Item 7a. Quantitative and Qualitative Disclosures About Market Risk**

#### **Interest Rate Risk**

As of December 31, 2003 our cash and short-term investments totaled \$3.9 million. We generally place our cash and short-term investments in high-credit quality instruments, primarily U.S. Government obligations and corporate obligations with contractual maturities of less than one year. These investments are not held for trading or other speculative purposes. Changes in interest rates affect the income we earn on our investments and therefore impact our cash flows and results of operations.

Borrowings under our accounts receivable purchase facility with Silicon Valley Bank bear interest at a variable rate based on the U.S. prime rate of interest. As of December 31, 2003 we owed no amounts under this facility.

#### **Foreign Currency Exchange Rate Risk**

Substantially all of our sales to date have been denominated in U.S. dollars. As a result, we do not experience any significant foreign currency gains or losses related to our revenues.

In 2003, however, approximately 23.1% of our revenue was derived from transactions with customers outside the United States and we expect this percentage to grow in 2004. To the extent that we engage in international sales denominated in U.S. dollars, an increase in the value of the U.S. dollar relative to foreign currencies could make our products relatively more expensive in international markets.

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A portion of our expenses, exclusively related to our R&D facility in Calgary, Alberta, Canada, are denominated in Canadian dollars while our functional currency is the U.S. dollar. In 2003, as a result of the appreciation of the Canadian dollar relative to the U.S. dollar, we realized foreign currency losses of approximately \$100,000. In the event the Canadian dollar continues to appreciate in 2004 we will experience additional foreign currency losses. Holding all other variables constant and on a hypothetical basis, a further 10% increase in the value of the Canadian dollar against the U.S. dollar over 2004 would result in approximately \$300,000 in foreign currency losses for the year. Conversely, a 10% decrease over 2004 would result in approximately \$300,000 in foreign currency gains for the year.

We will continue to monitor our exposure to foreign currency fluctuations and although we have never used financial hedging techniques to date, we may use them in the future to minimize the effect of these fluctuations. Nevertheless, we cannot assure you that these fluctuations will not adversely affect our results of operations in the future.

### **Item 8. *Financial Statements and Supplementary Data***

The index to our Consolidated Financial Statements and the Independent Auditors' Report appears in Part IV of this Form 10-K.

### **Item 9. *Changes In and Disagreements With Accountants On Accounting and Financial Disclosure***

On July 17, 2002, our Board of Directors of the Company, upon the recommendation of its Audit Committee, dismissed Arthur Andersen LLP ("Arthur Andersen" or "AA") as our independent public accountants and engaged KPMG LLP ("KPMG") to serve as our independent auditors.

Arthur Andersen's reports on the Company's Consolidated Financial Statements for the year ended December 31, 2001 did not contain an adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles.

There have been no disagreements with our independent auditors on accounting and financial disclosures.

### **Item 9A. *Controls and Procedures***

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports to the SEC is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and principal accounting officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, including internal control over financial reporting, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. For example, a company's operations may change over time, such as the result of new or discontinued lines of business and management must periodically modify a company's internal controls and procedures to timely match these changes in its business. And, in the end, all controls and procedures are necessarily subject to the judgment of management in evaluating the design and cost benefit relationship of possible controls and procedures, and the judgment of company personnel in their application.

As of December 31, 2003, the end of the fiscal year covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our chief executive officer and principal accounting officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on the foregoing, our chief executive officer and principal accounting officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

There have been no significant changes in our internal control over financial reporting or identified in connection with the evaluation referenced above that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART III****Item 10. Directors and Executive Officers of the Registrant**

The following sets forth certain biographical information concerning each of our directors and our executive officers as of March 15, 2004.

**Identification of Directors**

<u>Name</u>	<u>Age</u>	<u>Position with the Company</u>	<u>Director Since</u>
Mark Rossi	47	Chairman of the Board	1999
Robert H. Getz	41	Director	1999
Peter V. Leparulo	44	Director, Chief Executive Officer	2003
Peng K. Lim	40	Director	2001
Daniel E. Pittard	54	Director	2002
Horst J. Pudwill	58	Director	2003
David A. Werner	51	Director	2004

*Mark Rossi* has served as the chairman of our board since January 2003 and as a director since December 1999. Mr. Rossi has served as managing director of Cornerstone Equity Investors, LLC, a private equity investment firm that specializes in technology and telecommunications, business service and healthcare information investments, since December 1996. Prior to joining Cornerstone, Mr. Rossi served as the president of Prudential Equity Investors, Inc., a private equity investment firm, from June 1994 to December 1996. Mr. Rossi also serves as a director of Maxwell Technologies, Inc., a diversified technology products and services company, as well as several other private companies. Mr. Rossi holds a Bachelor of Arts degree from Saint Vincent College and a Master of Business Administration degree in finance from the Kellogg School of Management at Northwestern University.

*Robert H. Getz* has served as a director since December 1999. Mr. Getz has been a managing director of Cornerstone Equity Investors, LLC, a private equity investment firm that specializes in technology and telecommunications, business service and healthcare information investments, since December 1996. Prior to joining Cornerstone, Mr. Getz served as a managing director of Prudential Equity Investors, Inc., also a private equity investment firm, from February 1987 to December 1996. Mr. Getz also serves as a director of several private companies, including Centurion Wireless Technologies, Inc., a designer and manufacturer of antenna and power solutions for the wireless device industry. Mr. Getz holds a Bachelor of Arts degree from Boston University and a Master of Business Administration degree in finance from the Stern School of Business at New York University.

*Peter V. Leparulo* has served as a director since May 2003 and as our chief executive officer since January of 2003. Prior to that time, he was our senior vice president, general manager, CDMA operations since May 2001. From September 2000 to May 2001, he served as our senior vice president, corporate and strategic development and general counsel. From June 1998 until September 2000, Mr. Leparulo was a senior partner at the law firm of Orrick, Herrington & Sutcliffe LLP, where he specialized in corporate finance, mergers and acquisitions, securities, intellectual property and general corporate matters. Prior to joining Orrick, Mr. Leparulo was a partner at the law firm of Pillsbury Madison & Sutro LLP, from January 1992 until June 1998, and an associate at that firm from October 1989 until January 1992. He holds a Bachelor of Science degree from Colgate University and a Juris Doctor from Case Western Reserve University.

*Peng K. Lim* has served as a director since May 2001. Mr. Lim has served as the president and chief executive officer of TapWave, Inc., a mobile solutions company, since May 2001. Prior to that time, Mr. Lim

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served as vice president, worldwide product development of Palm, Inc., a handheld and wireless computer company, from April 1999 to May 2001. Prior to that time, Mr. Lim served as vice president of engineering of Fujitsu Personal Systems, a pen-based and wireless computer company and a wholly-owned subsidiary of Fujitsu Limited, from June 1997 to March 1999. From July 1996 to June 1997, Mr. Lim was an engineering platform director for Texas Instruments, Incorporated, a semiconductor company. Mr. Lim currently serves on the board of directors of inViso Inc., a web hosting and design company. Mr. Lim holds a Bachelor of Science degree and a Master of Science degree in Electrical Engineering from University of Windsor and a Master of Engineering Management from Northwestern University. Mr. Lim also completed the Stanford Executive Program for Growing Companies at Stanford University.

*Daniel Pittard* has served as a director since November 2002. Since November 1999, Mr. Pittard has served as chairman and chief executive officer of ideaEDGE Ventures LLC, a venture development firm assisting companies in the creation and launching of new mobile Internet endeavors, products and services. Prior to co-founding ideaEDGE Ventures, he was senior vice president, strategy and new ventures for Gateway, Inc., a computer manufacturer, from October 1998 to June 1999, where he was chief strategy officer responsible for business development, acquisitions and new ventures. His earlier experience includes serving as a partner at McKinsey & Company, group vice president at Amoco Corporation and senior vice president and general manager for Pepisco, Inc. He received a Masters in Business Administration from Harvard University and a Bachelor of Science from Georgia Institute of Technology.

*Horst J. Pudwill* has served as a director since July 2003. Since 1985, Mr. Pudwill has served as founder, chairman and chief executive officer of Techtronic Industries Co., Ltd., a Hong Kong-based global manufacturer of industry leading brands in power tools, lawn and garden equipment, and floor care appliances. Mr. Pudwill co-founded Novatel Wireless and previously served on our board from 1996 until 2000. Mr. Pudwill received a Master's Degree in Commerce and Engineering from Technical College, Flensburg, Germany and a degree in Engineering from Technical College, Verden, Germany.

*David A. Werner* has served as a director since January 2004. Mr. Werner currently is a partner at Engineered Components, an acquisition and business development company serving the engineered components market, which he joined in 2002. Prior to Engineered Components, Mr. Werner served as executive vice president and chief financial officer of Day Runner, Inc. from 1999 to 2002. Prior to that, Mr. Werner was executive vice president and member of the board of directors for Kaynar Technologies, Inc., a specialty component manufacturer, from 1994 to 1999. Mr. Werner is a Certified Public Accountant and received both a Bachelor of Science in business administration and a Masters in Business Administration from the University of Southern California.

During the first quarter of 2004, two of our directors resigned from our board of directors. Mr. David Oros, a director since 2000, resigned in February 2004 and Mr. Steven Sherman, a director since 1996, resigned in March 2004, in each case not because of any disagreements concerning our operations, policies or practices.

### Identification of Executive Officers

<u>Name</u>	<u>Age</u>	<u>Position with the Company</u>
Peter V. Leparulo	44	Chief Executive Officer and Director
Robert M. Hadley	40	Vice President, Sales and Marketing
Dan L. Halvorson	38	Vice President, Finance, Chief Accounting Officer and Treasurer
Patrick J. O'Bright	40	Vice President, Operations and General Manager
Slim S. Souissi	39	Vice President, Chief Technology Officer

*Peter V. Leparulo* has served as our chief executive officer since January 2003. Biographical information regarding Mr. Leparulo is set forth above under "Identification of Directors."

*Robert M. Hadley* has served as our vice president of sales and marketing since January 2003. Prior to that time, he served as our vice president of strategic accounts from April 2001 to December 2002. Before joining us, Mr. Hadley was vice president sales for e-SIM Ltd., a provider of advanced simulation technology for product

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development. Prior to that Mr. Hadley held various senior sales and marketing positions inside Aonix, a Thomson Software company providing IT solutions for corporate enterprise reporting and lifestyle software development markets, where he rose to the position of vice president of marketing. Mr. Hadley holds a Bachelor of Science degree in Computer Science from San Diego State University.

*Dan L. Halvorson* has served as our vice president of finance, chief accounting officer and treasurer since January 2004. Prior to that time, Mr. Halvorson served as our vice president of finance and treasurer since September 2001 and as director of finance and treasurer since joining us in March 2000. From January 1998 through March 2000, Mr. Halvorson was director of finance at Dura Pharmaceuticals. Mr. Halvorson is a Certified Public Accountant and holds a Bachelor of Science degree from San Diego State University.

*Patrick J. O'Bright* has served as our vice president of operations and general manager since January 2003. From September 2000 until January 2003, he was our director of CDMA strategy. From May 1999 until September 2000, he was a program manager at Motorola, Inc. From August 1998 to May 1999, he worked in manufacturing operations with QUALCOMM, Incorporated. Mr. O'Bright received a Bachelor of Science degree from the State University of New York after which he served in the United States Navy for approximately 11 years.

*Slim S. Souissi* has served as our vice president and chief technology officer since October 2002. Prior to that time, he served as our vice president of emerging technologies from December 2001 to October 2002 and as our principal research scientist from May 2000 to December 2001. Prior to joining us, Dr. Souissi was principal staff engineer in Motorola's research and development operation from November 1994 to May 2000. Dr. Souissi earned a Ph.D. and a Master's Degree in Electrical Engineering from the Georgia Institute of Technology, a Master's Degree in Digital Signal Processing from the Ecole Superieure d'Electricite (France) and a Master's degree in Engineering from the Ecole Superieure d'Ingenieurs de Marseille (France). In addition, Dr. Souissi holds 26 U.S. patents, all related to wireless technology.

### **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires our directors, certain of our officers (as defined in regulations issued by the SEC), and persons who beneficially own more than ten percent of any class of any equity security of ours which is registered pursuant to Section 12 of the Exchange Act, to file with the SEC initial reports of beneficial ownership and reports of changes in beneficial ownership of our securities.

To our knowledge, based solely on a review of the copies of such reports furnished to us and representations made to us that no other reports were required during 2003, we believe that all Section 16(a) filing requirements were complied with by our officers, directors and greater than 10% shareholders except that the initial Form 3 filings required of Bay Investments Ltd., Mutual Trust Management (Bermuda) Ltd., Soen Lee and Sofaer Capital, Inc. were filed late.

### **Code of Ethics**

We have adopted a code of ethics that applies to all our officers and employees. A copy of the code of ethics is available, without charge, upon request, by addressing your request to: Corporate Secretary, Novatel Wireless, Inc., 9255 Towne Centre Drive, San Diego, CA 92121. We will disclose any amendments to our code of ethics and all waivers from any provisions of our code of ethics granted to any of our executive officers on our website at [www.novatelwireless.com](http://www.novatelwireless.com).

### **Audit Committee**

Our board of directors has a separately designated standing audit committee established in accordance with Section 3(a)(58)(A) of the Exchange Act, consisting of directors Rossi, Getz and Werner, as chairman. Our board has determined that audit committee chairman David Werner, an independent member of our board of directors, is an audit committee financial expert within the meaning of Rule 4350 of the National Association of Securities Dealers, Inc. and the SEC guidelines.

[Table of Contents](#)**Item 11. Executive Compensation**

The following table sets forth the salary, bonus and other compensation paid for 2001, 2002 and 2003 with respect to our Chief Executive Officer, our former Chief Executive Officer, and our former Senior Vice President, Finance, Chief Financial Officer and Secretary (Named Executive Officers).

**Summary Compensation Table**

	Year	Annual Compensation			Long-Term Compensation	All Other Compensation
		Salary	Bonus(1)	Other Annual Compensation	Securities Underlying Options Granted	
Peter V. Leparulo(2)	2003	\$ 198,764	\$ —	\$ —	771,334	\$ —
Chief Executive Officer	2002	230,000	—	109,541(3)	55,331	—
	2001	230,000	28,750	27,244(3)	—	—
John E. Major(4)	2003	13,585	—	—	—	153,500(5)
Chairman of the Board, Chief Executive Officer	2002	325,000	—	—	182,380	—
	2001	325,000	81,250	—	—	—
Melvin L. Flowers(6)	2003	198,973	—	—	271,334	—
SVP, Finance, CFO & Secretary	2002	227,500	—	—	55,330	—
	2001	200,000	26,250	—	—	—

- (1) Unless otherwise noted, the amount for any year represents the amount earned in that year, whether or not paid in a subsequent year. The amount of any bonus was determined by the compensation committee of the board of directors and thereafter ratified by the board of directors.
- (2) Mr. Leparulo commenced serving as our chief executive officer as of January 13, 2003, prior to which he was our senior vice president, general manager, CDMA operations.
- (3) Represents relocation and temporary living expenses paid by us.
- (4) Mr. Major ceased serving as our chief executive officer as of January 13, 2003.
- (5) Represents severance and related legal fees paid to Mr. Major in connection with the termination of his employment.
- (6) Mr. Flowers ceased serving as our senior vice president, finance, chief financial officer and secretary as of December 31, 2003.

**Option Grants in Last Fiscal Year**

We granted options to purchase a total of 1,042,668 shares to the Named Executive Officers during 2003. During the same period, we granted options to purchase up to a total of 2,139,010 shares of common stock to other employees at exercise prices equal to the fair market value of the common stock on the date of grant, as quoted on The Nasdaq Stock Market. The options granted to the Named Executive Officers during 2003 vest at the rate of 20% on the six month anniversary of the vesting commencement date, and  $\frac{1}{30}$  th of the balance each month thereafter. All these options automatically vest upon a change in control of our company. In addition, the options granted to Mr. Leparulo automatically vest in the event we were to terminate Mr. Leparulo's employment for any reason other than cause.

**Option Grants in Last Fiscal Year**

	Individual Grants				Grant Date Present Value \$(1)
	Number of Securities Underlying Options Granted (#)	% of Total Options Granted to Employees in Fiscal Year	Exercise Price (\$/Sh)	Expiration Date	
Peter V. Leparulo	771,334	24.24%	(2)	(2)	\$ 652,953
John E. Major	—	—	—	—	—
Melvin L. Flowers	271,334	8.53	2.65	(3)	569,910

- (1) The grant date present value was determined using a Black-Scholes option pricing model with the following assumptions: expected volatility of 123.0%, risk free rate of return of 3.0%, no dividend yield and an expected term of four years.
- (2) Mr. Leparulo received two separate option grants during 2003. Options to purchase an aggregate of 744,024 shares of common stock were granted at an exercise price of \$1.01 per share and expire May 7, 2013. Options to purchase an aggregate of 27,310 shares of common stock were granted at an exercise price of \$2.65 per share and expire June 26, 2013.
- (3) Effective upon Mr. Flowers' resignation on December 31, 2003, all his then unvested options were automatically cancelled.

**Aggregated Option Exercises in Fiscal Year 2003 and Fiscal Year-End Option Values**

The Named Executive Officers did not exercise any stock options during 2003. The following table sets forth certain information concerning unexercised options held by the Named Executive Officers at December 31, 2003.

	Number of Shares Underlying Unexercised Options at December 31, 2003		Value of Unexercised In-the-Money Options at December 31, 2003	
	Exercisable	Unexercisable	Exercisable	Unexercisable
Peter V. Leparulo	327,416	539,249	\$ 1,361,107	\$ 2,543,132
John E. Major(1)	—	—	—	—
Melvin L. Flowers(2)	132,083	—	289,036	—

- (1) Mr. Major ceased serving as our chief executive officer as of January 13, 2003. As a consequence, unvested and unexercisable options to purchase up to 222,869 shares of common stock then held by Mr. Major were automatically cancelled on January 13, 2003. Mr. Major's remaining 161,946 vested options were exercisable through April 13, 2003, but all such options expired unexercised on that date.
- (2) Mr. Flowers ceased serving as our senior vice president, finance, chief financial officer and secretary as of December 31, 2003. As a consequence, unvested and unexercisable options to purchase up to 234,581 shares of common stock then held by Mr. Flowers were automatically cancelled on December 31, 2003. Mr. Flowers' remaining vested options are exercisable through March 30, 2004.

The value of unexercised in-the-money options represents the positive spread between the exercise price of the stock options and the fair market value of our common stock including such options (calculated using the closing sales price of our common stock on December 31, 2003 of \$5.99 as reported on The Nasdaq SmallCap Market).

#### **401(k) Plan**

Our 401(k) plan covers employees located in the United States. The 401(k) plan is intended to qualify under Section 401(k) of the Internal Revenue Code. Consequently, contributions to the 401(k) plan by employees or by us, and the investment earnings on these contributions, are not taxable to employees until withdrawn from the 401(k) plan. Further, contributions by us, if any, will be deductible by us when made. Employees may elect to contribute up to 15.0% of their current annual compensation to the 401(k) plan up to the statutorily prescribed annual limit. The 401(k) plan does not currently permit, but may in the future be amended to permit, additional matching contributions to the 401(k) plan by us on behalf of all participants in the 401(k) plan.

#### **Employment Arrangements**

In May 2001, we entered into management retention agreements with certain of our executive officers providing for those employees to receive enumerated severance benefits if, within 24 months following a change of control (or at the direction of an acquirer in anticipation of such an event), we were to terminate the employee's employment other than for cause or disability or if the employee were to terminate his employment with us for good reason. As a condition of the March 12, 2003 financing transaction, we terminated the management retention agreements by mutual agreement with the employees who remained employed by us.

Effective January 13, 2003, our then chief executive officer, John Major, was replaced and his employment was terminated without cause. As a result, pursuant to his employment agreement, he was entitled to receive \$325,000 in a lump sum payment. In July 2003, we entered into a separation agreement with Mr. Major pursuant to which we paid him a total of \$150,000 in three installments in accord and satisfaction of the amounts payable under the employment agreement or which may have been payable under his management retention agreement.

#### **Compensation Committee Interlocks and Insider Participation**

The compensation committee of our board of directors during 2003 was comprised of Messrs. Rossi and Lim. There are no compensation committee interlocks and none of our employees is a member of our compensation committee.

#### **Compensation of Directors**

Non-employee directors currently receive \$1,500 from us for each board meeting they attend in person (\$750 if attendance at such board meeting is via telephone) and \$500 for attending each board committee meeting (whether attended in person or via telephone), as well as reimbursement of reasonable expenses incurred in connection with attending those meetings. We do not currently pay our non-employee directors an annual retainer fee. Those of our directors who are also employees of Novatel Wireless are eligible to participate in our stock incentive plan (Incentive Plan) and our employee stock purchase plan (Purchase Plan). Non-employee directors are eligible to participate in the Incentive Plan. Our board adopted the Incentive Plan and the Purchase Plan on July 24, 2000 and our stockholders approved each of them in September 2000. Prior to 2003, each of our then existing non-employee directors had previously received options to purchase 20,000 shares of our common stock. During 2003, our non-employee director compensation policy was revised to provide for all future non-employee directors to receive, upon being appointed to the board, a one-time grant of options to purchase up to 85,000 shares of our common stock. One-fifth of these options vest and become exercisable six months following the date of grant and the remaining balance vests ratably over the following 30 months while service on our board continues. Also during 2003, our existing non-employee directors each received a one-time grant of options to purchase approximately 71,667 shares of our common stock. One-fifth of these options vested and became exercisable on May 20, 2003 with the remaining balance vesting ratably over the following 30 months while service on our board continues. Pursuant to the Incentive Plan, options granted to non-employee directors automatically vest upon a change in control of the Company.

#### **Item 12. Security Ownership of Certain Beneficial Owners and Management**

The following table sets forth certain information as of March 2, 2004 with respect to the beneficial ownership of our voting securities of (i) each person who, to our knowledge, beneficially owns more than 5% of any class of our voting securities, (ii) each of our directors and Named Executive Officers, individually and (iii) all our directors and executive officers as a group.

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We have relied exclusively upon information provided to us by our directors, Named Executive Officers and executive officers and copies of documents that have been filed with the SEC by others for purposes of determining the number of shares of our capital stock each person beneficially owns. Beneficial ownership is determined in accordance with the rules and regulations of the SEC and generally includes those persons who have voting or investment power with respect to the subject securities. Except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of our capital stock beneficially owned by them. Percentage ownership in the table below is based on 16,104,906 shares of common stock outstanding on March 2, 2004. Shares of our stock subject to options or warrants that are exercisable within 60 days of March 2, 2004 and shares of our common stock issuable upon conversion of our Series A preferred stock or Series B preferred stock that are issued and outstanding on March 2, 2004 are also deemed outstanding for purposes of calculating the percentage ownership of that person, and if applicable, the percentage ownership of executive officers and directors as a group, but are not treated as outstanding for the purpose of calculating the percentage ownership of any other person.

Name and Address of Beneficial Owner(1)	Number of Shares Beneficially Owned			Percentage of Class Beneficially Owned		
	Common	Series A	Series B	Common	Series A	Series B
Bay Investments Ltd.(2) Suite 1806 Central Plaza 18 Harbour Rd Wanchal Hong Kong K3 0000	3,734,463	—	2,352	19.19	—	49.15
Horst J. Pudwill(3)	3,758,263	—	2,352	19.28	—	49.15
Cornerstone Equity Investors, LLC(4) 717 Fifth Avenue, Suite 1100 New York, NY 10022	2,939,120	—	1,176	16.38	—	24.58
Robert Getz(5)	2,983,227	—	1,176	16.58	—	24.58
Mark Rossi(5)	2,983,227	—	1,176	16.58	—	24.58
Entities affiliated with Sofaer Capital, Inc.(6) 16 Ice House Street, 16th floor Central Hong Kong	1,506,601	—	1,054	8.90	—	22.04
Peter Leparulo(7)	520,459	—	59	3.13	—	1.23
Gemini Investors(8) 20 William Street Wellesley, MA 02481	128,165	900	—	*	100	*
Melvin Flowers(9)	38,706	—	—	*	—	—
Daniel Pittard(10)	34,150	—	—	*	—	—
Peng K. Lim(11)	25,163	—	—	*	—	—
David Werner	—	—	—	—	—	—
John Major	—	—	—	—	—	—
All directors and executive officers as a group (11 persons)	7,563,110	31.95				

\* Represents less than one percent of the outstanding class of voting securities.

(1) Unless otherwise indicated, the principal address for each of the persons listed is c/o Novatel Wireless, Inc., 9255 Towne Centre Drive, Suite 225, San Diego, CA 92121.

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- (2) Includes 374,370 shares of common stock and 3,360,093 shares of common stock issuable upon conversion of 2,352 shares of Series B preferred stock currently issued and outstanding. Bay Investments Ltd. is the holder of record of these securities. Horst J. Pudwill, one of our directors, exercises voting and investment control over all these securities and disclaims beneficial ownership except to the extent of his pecuniary interest therein.
- (3) Includes those shares identified in footnote (2) above and 23,800 shares of common stock issuable within 60 days of March 2, 2004 upon the exercise of stock options held directly by Mr. Pudwill.
- (4) Includes 1,097,619 shares of common stock, 1,680,043 shares of common stock issuable upon conversion of 1,176 shares of Series B preferred stock and 161,458 shares of common stock issuable upon the exercise of common stock purchase warrants.
- (5) Includes those shares identified in footnote (4) above and 44,107 shares of common stock issuable within 60 days of March 2, 2004 upon the exercise of stock options held directly by each of Mr. Getz and Mr. Rossi upon the exercise of stock options held by each. Mr. Getz, one of our directors, and Mr. Rossi, the Chairman of our Board of Directors, are both managing directors of Cornerstone Equity Investors, LLC. Cornerstone Equity Investors IV, L.P., the record holder of these securities, is an investment fund whose managing general partner is Cornerstone Equity Investors, LLC. Excluding shares issuable upon exercise of stock options, Mr. Getz and Mr. Rossi together with Robert Knox, Dana O'Brien, Steve Larson and Mike Najjar exercise voting and investment control over these securities and each disclaims beneficial ownership except to the extent of his respective pecuniary interest therein.
- (6) Includes 986,089 shares of common stock issuable upon conversion of 690 shares of Series B preferred stock held by Caledonian Bank & Trust Limited, trustee, Sofaer Funds/Sofaer Capital Global Hedge Fund (Sofaer). Also includes 520,512 shares of common stock issuable upon conversion of 364 shares of Series B preferred stock held by RIT Capital Partners, PLC (RIT). Sofaer Capital, Inc. is the investment advisor of each of Sofaer and RIT. Mr. Michael Sofaer exercises voting and investment control over these securities and disclaims beneficial ownership except to the extent of his pecuniary interest therein.
- (7) Represents: 1,105 shares of common stock, 84,003 shares of common stock issuable upon conversion of 59 shares of Series B preferred stock, 20,104 shares of common stock issuable upon the exercise of warrants and 415,247 shares of common stock issuable within 60 days of March 2, 2004 upon the exercise of stock options. Mr. Leparulo is our chief executive officer.
- (8) Includes 74,684 shares of common stock issuable upon conversion of 750 shares of Series A preferred stock and 38,544 shares of common stock issuable upon the exercise of warrants held of record by GMN Investors II, L.P., the managing general partner of which is Gemini Investors. Also includes 14,937 shares of common stock issuable upon conversion of 150 shares of Series A preferred stock held directly by David F. Millet. Voting and investment control over the securities held of record by GMN Investors II, L.P. is shared by David Millet, James Goodman and Jeff Newton and each disclaims beneficial ownership of these securities except to the extent of his respective pecuniary interest therein.
- (9) Represents 38,706 shares of common stock issuable through March 30, 2004 upon the exercise of stock options. Mr. Flowers ceased serving as our senior vice president, finance, chief financial officer and secretary as of December 31, 2003.
- (10) Represents 34,150 shares of common stock issuable within 60 days of March 2, 2004 upon the exercise of stock options. Mr. Pittard is a Novatel Wireless director.
- (11) Represents 25,163 shares of common stock issuable within 60 days of March 2, 2004 upon the exercise of stock options. Mr. Lim is a Novatel Wireless director.

**Equity Compensation Plan Information**

Plan category	Name of Plan	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	The Amended and Restated Novatel Wireless, Inc. 2000 Stock Incentive Plan	3,794,252	\$ 6.22	1,667,991
Equity compensation plans not approved by security holders	None			
<b>Total</b>		<b>3,794,252</b>	<b>\$ 6.22</b>	<b>1,667,991</b>

(a) Our stockholders approved our amended and restated 2000 Stock Incentive Plan in September 2000, immediately prior to our initial public offering in November 2000. The amounts included in this table include options to purchase shares of our common stock that we issued under our predecessor plan, the amended and restated 1997 Employee Stock Option Plan, further grants under which were terminated on November 15, 2000.

(c) On the first day of each fiscal year while the plan is in effect, shares available for issuance under the plan are added to the plan equal to the lesser of (i) 100,000 shares, (ii) three percent of the shares of our common stock outstanding on the last day of the prior fiscal year, or (iii) such lesser number of shares as our board may determine in its sole discretion.

**Item 13. Certain Relationships and Related Transactions**

*Series B Financing.* In March and May of 2003, we entered into a series of agreements with a group of investors in connection with the private placement of approximately \$6.7 million of convertible debt and convertible equity securities and common stock purchase warrants. See Footnote 7 to the Financial Statements for a summary of this transaction. Cornerstone Equity Investors, LLC, a greater than 5% stockholder of ours, participated in this financing. Robert Getz and Mark Rossi, two of our directors, are each managing directors of Cornerstone. Cornerstone invested \$1 million in the convertible debt and equity securities that we issued and also received warrants to purchase up to 402,083 shares of our common stock. Peter V. Leparulo, our chief executive officer since January of 2003, purchased \$50,000 of the convertible debt and equity securities and warrants to purchase up to 21,427 shares of common stock.

In the past, we have sold products to and purchased products from AirLink Communications, Inc., whose chairman and principal stockholder is Mr. Steven Sherman, a former member of our board of directors and a current Novatel Wireless stockholder. During 2003, our sales to AirLink were \$61,000 and our purchases from AirLink totaled \$59,000. At December 31, 2003, AirLink owed us \$496,000 for past purchases. On March 11, 2004, the remaining \$496,000 of the AirLink indebtedness was settled in full by AirLink through cash payments to us of \$213,000 with the remaining balance settled primarily by an offset of trade payables that we owed to AirLink as a result of our own purchases in the ordinary course from AirLink, including purchases by us in 2004 totaling \$208,000. Also, effective March 11, 2004, AirLink's chairman of the board, Mr. Steven Sherman, resigned as a member of our board of directors.

We sell products to a subsidiary of Chinatron Group Holdings Limited. Mr. Horst J. Pudwill, one of our directors and principal stockholders, is also a director and stockholder of Chinatron. In addition, the chairman and chief executive officer of Chinatron participated in the Series B financing described above. Sales to Chinatron for the year ended December 31, 2003 were \$702,000.

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### Item 14. *Principal Accounting Fees and Services*

#### **Fees Billed by Independent Public Auditors**

The aggregate fees billed by KPMG LLP, our independent public auditors, for 2003 and 2002 are as follows:

	Fees Paid	
	2003	2002
Audit Fees(1)	\$ 205,000	\$ 177,600
Audit-Related Fees(2)	55,500	6,800
Tax Fees(3)	—	—
All Other Fees(4)	—	—

- (1) Audit Fees consist of fees billed for professional services rendered for the audit of our consolidated annual financial statements and review of the interim consolidated financial statements included in quarterly reports and services that are normally provided by KPMG LLP in connection with statutory and regulatory filings or engagements.
- (2) Audit-Related Fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our Consolidated Financial Statements and are not reported under "Audit Fees." For 2003, this category includes fees for consultations in connection with financings, registration statement filings with the SEC, and consultation on various accounting matters.
- (3) Tax Fees consist of fees billed for professional services rendered for tax compliance, tax advice and tax planning. We do not use KPMG for our tax compliance needs.
- (4) All Other Fees consist of fees for products and services other than the services reported above.

#### **Audit Committee Authorization of Audit and Non-Audit Services**

The Audit Committee has the sole authority to authorize all audit and non-audit services to be provided by the independent audit firm engaged to conduct the annual audit of our consolidated financial statements. In addition, the Audit Committee has adopted pre-approval policies and procedures that are detailed as to each particular service to be provided by the independent auditors, and such policies and procedures do not permit the Audit Committee to delegate its responsibilities under the Exchange Act to management. The Audit Committee pre-approved fees for all audit and non-audit services provided by the independent audit firm during our fiscal year ended December 31, 2003 as required by the Sarbanes-Oxley Act. The Audit Committee has considered whether the provision of the non-audit services is compatible with maintaining the independent auditors' independence, and has concluded that, in its opinion, the activities performed by KPMG on our behalf are compatible with maintaining the independence of such auditors.

**PART IV****Item 15. Exhibits, Financial Statement Schedules and Reports On Form 8-K****(a) 1. Index to Consolidated Financial Statements**

See Index to Consolidated Financial Statements and financial statement schedules.

**(a) 2. Index to Financial Statement Schedules**

The following Financial Statement Schedules for the years ended December 31, 2003, 2002 and 2001 should be read in conjunction with the Consolidated Financial Statements, and related notes thereto.

<u>Schedule</u>	<u>Page</u>
Schedule II—Valuation and Qualifying Accounts	F-33

Schedules not listed above have been omitted because they are not applicable or are not required or the information required to be set forth therein is included in the Consolidated Financial Statements or notes thereto.

**(a) 3. Exhibits**

The following Exhibits are filed as part of, or incorporated by reference into, this Report on Form 10-K:

<u>Exhibit Number</u>	<u>Description</u>
3.1(1)	Certificate of Incorporation.
3.2(4)	Certificate of Designation of Series A Convertible Preferred Stock.
3.3(1)	Bylaws.
4.1(2)	Specimen Common Stock Certificate.
4.2(4)	Specimen Series A Convertible Preferred Stock Certificate.
4.3(4)	Form of Common Stock Purchase Warrant issued in connection with the Company's Series A Convertible Preferred Stock Financing.
4.4(5)	Warrant to Purchase Stock, issued in connection with the Company's facility with Silicon Valley Bank.
4.5(5)	Form of Common Stock Purchase Warrant issued in connection with the Company's 1999 Series B Convertible Preferred Stock Financing.
4.6(5)	Form of Common Stock Purchase Warrant issued in connection with the Company's Series C Convertible Preferred Stock Financing.
4.7(5)	Form of Common Stock Purchase Warrant issued in connection with the Company's Debenture Financing.
4.8(5)	Form of Common Stock Purchase Warrant issued in connection with the Company's Series D Convertible Preferred Stock Financing.
4.9(7)	Form of Securities Purchase Agreement entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.10(7)	Form of Secured Convertible Subordinated Note issued in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.11(7)	Form of Secured Convertible Subordinated Note issued in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.12(7)	Form of Common Stock Purchase Warrant issued in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.

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<u>Exhibit Number</u>	<u>Description</u>
4.13(7)	Form of Security Agreement entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.14(7)	Form of Certificate of Designation with respect to Series A Convertible Preferred Stock.
4.15(7)	Form of Certificate of Designation with respect to Series B Convertible Preferred Stock.
4.16(7)	Form of Registration Rights Agreement entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
10.1(3)	1997 Stock Incentive Plan, as Amended and Restated.
10.2(6)	2000 Stock Incentive Plan, as Amended and Restated.
10.3(3)	2000 Employee Stock Purchase Plan.
10.4(2)	Amended and Restated Registration Rights Agreement, dated as of June 15, 1999, by and among Novatel Wireless, Inc. and some of its stockholders.
10.5(2)	Amended and Restated Investors' Rights Agreement, dated as of June 30, 2000, by and among Novatel Wireless, Inc. and some of its stockholders.
10.6(2)	Form of Indemnification Agreement between Novatel Wireless, Inc. and each of its officers and directors.
10.7(5)	Loan and Security Agreement, dated as of November 29, 2001, by and between the Company and Silicon Valley Bank.
10.8(5)	Silicon Valley Bank Registration Rights Agreement, dated as of November 29, 2001, by and between the Company and Silicon Valley Bank.
10.9(6)	Silicon Valley Bank Antidilution Agreement, dated as of November 29, 2001, by and between the Company and Silicon Valley Bank.
10.10(2)	Real Property Sublease dated as of July 7, 2000, by and between Sicor Inc. (formerly Gensia Sicor, Inc.) and Novatel Wireless, Inc., for 9360 Towne Centre Drive, San Diego, California.
10.11(2)	Real Property Lease, dated as of February 1, 1997, by and between Novatel Wireless Technologies Ltd. and Sun Life Assurance Company of Canada, for 6715 8th St., N.E., Calgary, Alberta.
*10.12(2)	Employment Agreement, dated as of July 24, 2000, by and between Novatel Wireless, Inc. and John Major.
*10.13(2)	Employment Agreement, dated as of August 21, 1996, by and among Novatel Wireless, Inc., Novatel Wireless Technologies Ltd. and Ambrose Tam.
10.14(6)	Form of Change of Control Letter Agreement, dated as of May 11, 2001, by and between Novatel Wireless, Inc. and several executives of Novatel Wireless, Inc.
10.15(2)	Standard Manufacturing Agreement, dated as of August 8, 2000, by and between Novatel Wireless, Inc. and Solectron de Mexico, S.A. de C.V.
10.16(2)	First Amendment to Employment Agreement, dated as of September 22, 2000, by and among Novatel Wireless, Inc., Novatel Wireless Technologies Ltd. and Ambrose Tam.
10.17(6)	Settlement Agreement and Mutual General Release, dated as of January 12, 2002 by and between Novatel Wireless, Inc. and Sanmina-SCI Corporation and Sanmina Canada ULC.
10.18(6)	Security Agreement, dated as of January 12, 2002 executed by Novatel Wireless, Inc. in favor of Sanmina-SCI Corporation.
10.19(6)	Amendment to the Loan and Security Agreement, dated as of November 21, 2002, by and between the Company and Silicon Valley Bank.

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<u>Exhibit Number</u>	<u>Description</u>
10.20	Securities Purchase Agreement entered into in connection with the Company's January 2004 Financing Transaction.
10.21	Registration Rights Agreement entered into in connection with the Company's January 2004 Financing Transaction.
10.22	Form of Common Stock Purchase Warrant issued in connection with the Company's January 2004 Financing Transaction.
21	Subsidiaries of Novatel Wireless, Inc.
23.1	Consent of KPMG LLP, Independent Auditors.
23.2	Notice regarding consent of Arthur Andersen LLP.
24	Power of Attorney (See signature page).
31.1	Certification of our Chief Executive Officer adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of our Chief Financial Officer adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer and Chief Accounting Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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(1) Incorporated by reference to the Company's annual report on Form 10-K for the year ended December 31, 2000.

(2) Incorporated by reference to the Company's Registration Statement on Form S-1 (No. 333-42570), filed November 14, 2000, as amended.

(3) Incorporated by reference to the Company's Registration Statement on Form S-8 (No. 333-53692), filed January 12, 2001.

(4) Incorporated by reference to the Company's current report on Form 8-K, filed January 18, 2002.

(5) Incorporated by reference to the Company's Registration Statement on Form S-3 (No. 333-81190), filed January 22, 2002, as amended.

(6) Incorporated by reference to the Company's annual report on Form 10-K for the year ended December 31, 2001.

(7) Incorporated by reference to the Company's current report on Form 8-K, filed March 28, 2003.

\* Management contract or compensation plan or arrangement.

**(b) Reports on Form 8-K**

Current report on Form 8-K, furnished pursuant to Items 7 and 9 on October 27, 2003, announcing financial results for the third quarter of 2003 and included in the press release related thereto.

### **Supplemental Information**

No Annual Report to Stockholders or Proxy materials have been sent to stockholders as of the date of this report. The Annual Report to Shareholders and Proxy material will be furnished to our stockholders subsequent to the filing of this report and we will furnish such material to the SEC at that time.



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Signature

Title

Date

/s/ DAVID A. WERNER

Director

March 11, 2004

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David A. Werner

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**NOVATEL WIRELESS, INC.**  
**CONSOLIDATED BALANCE SHEETS**

	As of December 31,	
	2003	2002
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 3,942,000	\$ 1,571,000
Restricted cash	635,000	105,000
Accounts receivable, net of allowance for doubtful accounts of \$311,000 in 2003 and \$333,000 in 2002	8,986,000	6,937,000
Accounts receivable — related parties (Note 12)	399,000	276,000
Inventories	2,349,000	4,250,000
Prepaid expenses and other	1,378,000	1,561,000
<b>Total current assets</b>	<b>17,689,000</b>	<b>14,700,000</b>
Property and equipment, net	1,915,000	4,101,000
Intangible assets, net	4,629,000	5,054,000
Other assets	188,000	192,000
	<b>\$ 24,421,000</b>	<b>\$ 24,047,000</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 6,730,000	\$ 6,919,000
Accrued expenses	1,179,000	1,266,000
Inventory purchase commitments	—	3,983,000
Borrowings under line of credit	—	2,234,000
Restructuring accrual	1,222,000	1,331,000
Deferred revenues	6,218,000	977,000
Current portion of capital lease obligations	82,000	133,000
<b>Total current liabilities</b>	<b>15,431,000</b>	<b>16,843,000</b>
Capital lease obligations, net of current portion	—	38,000
Convertible and redeemable Series A preferred stock, 1,025 in 2003 and 3,675 in 2002 shares issued and outstanding (Notes 6 and 7)	354,000	665,000
Commitments and contingencies (Notes 3 and 10)		
Stockholders' equity:		
Convertible Series B preferred stock, par value \$.001, 2,000,000 shares authorized, 4,899 (2003) and 0 (2002) shares issued and outstanding (Note 7)	—	—
Common stock, par value \$.001, 50,000,000 shares authorized, 12,737,640 (2003) and 6,984,823 (2002) shares issued and outstanding	13,000	7,000
Additional paid-in capital	255,212,000	238,640,000
Deferred stock compensation	(142,000)	(1,729,000)
Accumulated deficit	(246,447,000)	(230,417,000)
<b>Total stockholders' equity</b>	<b>8,636,000</b>	<b>6,501,000</b>
	<b>\$ 24,421,000</b>	<b>\$ 24,047,000</b>

**NOVATEL WIRELESS, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	Year Ended December 31,		
	2003	2002	2001
Revenue	\$ 33,052,000	\$ 28,825,000	\$ 39,996,000
Revenue — related parties (Note 12)	763,000	47,000	3,647,000
<b>Total revenue</b>	<b>33,815,000</b>	<b>28,872,000</b>	<b>43,643,000</b>
Cost of revenue	27,251,000	26,862,000	74,671,000
Cost of revenue — related parties	640,000	32,000	2,768,000
<b>Total cost of revenue</b>	<b>27,891,000</b>	<b>26,894,000</b>	<b>77,439,000</b>
<b>Gross margin</b>	<b>5,924,000</b>	<b>1,978,000</b>	<b>(33,796,000)</b>
<b>Operating costs and expenses:</b>			
Research and development	5,987,000	13,416,000	20,836,000
Sales and marketing	2,558,000	4,640,000	12,262,000
General and administrative	3,647,000	5,717,000	7,837,000
Restructuring and impairment charges	828,000	2,650,000	7,050,000
Amortization of deferred stock compensation(*)	738,000	3,556,000	10,360,000
<b>Total operating costs and expenses</b>	<b>13,758,000</b>	<b>29,979,000</b>	<b>58,345,000</b>
<b>Operating loss</b>	<b>(7,834,000)</b>	<b>(28,001,000)</b>	<b>(92,141,000)</b>
<b>Other income (expense):</b>			
Interest income	44,000	221,000	1,598,000
Interest expense (Note 7)	(3,939,000)	(538,000)	(332,000)
Other income (expense), net	91,000	—	(2,000)
<b>Net loss</b>	<b>\$ (11,638,000)</b>	<b>\$ (28,318,000)</b>	<b>\$ (90,877,000)</b>
Accretion of dividends and beneficial conversion features pertaining to preferred stock (Note 6 and 7)	(4,392,000)	(25,163,000)	(161,000)
<b>Net loss applicable to common stockholders</b>	<b>\$ (16,030,000)</b>	<b>\$ (53,481,000)</b>	<b>\$ (91,038,000)</b>
<b>Weighted average shares used in computation of basic and diluted net loss per common share</b>	<b>7,817,539</b>	<b>5,106,681</b>	<b>3,626,258</b>
<b>Basic and diluted net loss per common share</b>	<b>\$ (2.05)</b>	<b>\$ (10.47)</b>	<b>\$ (25.11)</b>
<b>(*) Amortization of deferred stock compensation:</b>			
Cost of revenue	\$ 51,000	\$ 363,000	\$ 1,884,000
Research and development	131,000	307,000	1,068,000
Sales and marketing	135,000	316,000	1,039,000
General and administrative	421,000	2,570,000	6,369,000
	<b>\$ 738,000</b>	<b>\$ 3,556,000</b>	<b>\$ 10,360,000</b>

**NOVATEL WIRELESS, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

	Preferred Stock		Common Stock		Additional Paid-in Capital	Deferred Compensation	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance, January 1, 2001			3,586,722	4,000	183,350,000	(18,234,000)	(85,898,000)	79,222,000
Exercise of stock options and warrants			42,809		504,000			504,000
Deferred compensation adjustment for stock options cancelled					(1,533,000)	1,533,000		
Amortization of deferred compensation						10,360,000		10,360,000
Shares issued under employee stock purchase plan			13,386		171,000			171,000
Accretion of dividends on Series A convertible and redeemable preferred stock							(50,000)	(50,000)
Imputed value of beneficial conversion feature relating to the issuance of Series A convertible and redeemable preferred stock					21,338,000			21,338,000
Imputed value of warrants issued in conjunction with Series A convertible and redeemable preferred stock					4,512,000			4,512,000
Accretion of imputed value assigned to the beneficial conversion feature on Series A convertible and redeemable preferred stock and related common stock warrants							(105,000)	(105,000)
Amortization of offering costs for Series A convertible and redeemable preferred stock							(6,000)	(6,000)
Imputed value of warrants issued in conjunction with obtaining line of credit					358,000			358,000
Net loss							(90,877,000)	(90,877,000)
Balance, December 31, 2001			3,642,917	4,000	208,700,000	(6,341,000)	(176,936,000)	25,427,000
Shares issued under the Sanmina settlement agreement (Note 10)			333,333		5,400,000			5,400,000
Shares repurchased under the Sanmina settlement agreement (Note 10)			(133,333)		(1,600,000)			(1,600,000)
Exercise of stock options and warrants			18,268		239,000			239,000

See accompanying notes to consolidated financial statements.

**NOVATEL WIRELESS, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY—(Continued)**

	Preferred Stock		Common Stock		Additional Paid-in Capital	Deferred Compensation	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Deferred compensation adjustment for stock options cancelled					(1,056,000)	1,056,000		
Amortization of deferred compensation						3,556,000		3,556,000
Shares issued under employee stock purchase plan			23,127		135,000			135,000
Accretion of dividends on Series A convertible and redeemable preferred stock							(1,132,000)	(1,132,000)
Accretion of imputed value assigned to the beneficial conversion feature on Series A convertible and redeemable preferred stock and related common stock warrants							(22,656,000)	(22,656,000)
Amortization of offering costs for Series A convertible and redeemable preferred stock							(1,375,000)	(1,375,000)
Conversion of Series A convertible and redeemable preferred stock into shares of common stock			2,114,848	2,000	24,425,000			24,427,000
Issuance of common stock, net of issuance costs			985,663	1,000	2,397,000			2,398,000
Net loss							(28,318,000)	(28,318,000)
Balance, December 31, 2002			6,984,823	7,000	238,640,000	(1,729,000)	(230,417,000)	6,501,000
Exercise of stock options and warrants			2,408,489	3,000	2,791,000			2,794,000
Deferred compensation adjustment for stock options cancelled					(849,000)	849,000		
Amortization of deferred compensation						738,000		738,000
Shares issued under employee stock purchase plan			16,372		15,000			15,000
Accretion of dividends on Series A convertible and redeemable preferred stock							(164,000)	(164,000)
Accretion of imputed value assigned to the beneficial conversion feature on Series A convertible and redeemable preferred stock and related common stock warrants							(2,310,000)	(2,310,000)
Amortization of offering costs for Series A convertible and redeemable preferred stock							(142,000)	(142,000)

See accompanying notes to consolidated financial statements.

**NOVATEL WIRELESS, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY—(Continued)**

	Preferred Stock		Common Stock		Additional Paid-in Capital	Deferred Compensation	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Conversion of Series A convertible and redeemable preferred stock into shares of common stock			253,299		2,926,000			2,926,000
Conversion of secured subordinated convertible promissory notes into shares of Series B preferred stock	4,721				4,721,000			4,721,000
Issuance of Series B preferred stock, net of issuance costs	2,050				1,522,000			1,522,000
Imputed value of beneficial conversion feature relating to the issuance of convertible notes payable					3,594,000			3,594,000
Warrants issued in connection with convertible notes payable					79,000			79,000
Imputed value of beneficial conversion feature relating to the issuance of Series B preferred stock					1,581,000		(1,581,000)	
Conversion of Series B preferred stock into shares of common stock	(2,068)		3,074,657	3,000	(3,000)			
Accretion of dividends on Series B preferred stock	196				195,000		(195,000)	
Net loss							(11,638,000)	(11,638,000)
Balance, December 31, 2003	4,899	\$	12,737,640	\$13,000	\$255,212,000	\$ (142,000)	\$ (246,447,000)	\$ 8,636,000

See accompanying notes to consolidated financial statements.

**NOVATEL WIRELESS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended December 31,		
	2003	2002	2001
<b>Cash flows from operating activities:</b>			
Net loss	\$ (11,638,000)	\$ (28,318,000)	\$ (90,877,000)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	3,689,000	4,615,000	4,713,000
Provision for bad debt	148,000	39,000	41,000
Inventory write-offs	1,960,000	2,506,000	16,210,000
Asset impairments		870,000	2,241,000
Gain on sale of property and equipment	(309,000)		
Accretion of interest expense on convertible notes	3,715,000		
Amortization of deferred compensation for stock options issued below fair value	738,000	3,556,000	10,360,000
Warrants issued in connection with convertible notes	79,000		
Amortization of deferred financing costs in conjunction with line of credit		328,000	30,000
Changes in assets and liabilities:			
Restricted cash	(530,000)	(5,000)	(100,000)
Accounts receivable	(2,197,000)	(270,000)	1,346,000
Accounts receivable — related parties	(123,000)	502,000	6,668,000
Inventories	(59,000)	(286,000)	(9,557,000)
Prepaid expenses and other assets	(208,000)	305,000	2,032,000
Accounts payable	(189,000)	(5,402,000)	(11,508,000)
Accrued expenses	(87,000)	(1,327,000)	(2,505,000)
Inventory purchase commitment	(478,000)	(6,366,000)	15,749,000
Restructuring accrual	(109,000)	(101,000)	1,432,000
Deferred revenues	5,241,000	641,000	(1,660,000)
Net cash used in operating activities	(357,000)	(28,713,000)	(55,385,000)
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(225,000)	(198,000)	(5,887,000)
Proceeds from sale of property and equipment	321,000		
Purchases of licensed technologies	(395,000)		(2,188,000)
Capitalized software development costs		(102,000)	(2,265,000)
Net cash used in investing activities	(299,000)	(300,000)	(10,340,000)
<b>Cash flows from financing activities:</b>			
Proceeds from / (payments on) line of credit	(2,234,000)	674,000	1,560,000
Net proceeds from issuance of convertible and redeemable Series A preferred stock			25,850,000
Offering costs for convertible and redeemable Series A preferred stock		(232,000)	

See accompanying notes to consolidated financial statements.

## NOVATEL WIRELESS, INC.

## CONSOLIDATED STATEMENTS OF CASH FLOWS—(Continued)

	Year Ended December 31,		
	2003	2002	2001
Net proceeds from issuance of Series B convertible preferred stock	1,522,000		
Proceeds from exercise of stock options and warrants	2,793,000	239,000	504,000
Proceeds from shares issued under the employee stock purchase plan	15,000	135,000	171,000
Repurchase of common stock under Sanmina Settlement Agreement		(1,600,000)	
Net proceeds from the issuance of common stock		2,398,000	
Net proceeds from the issuance of convertible notes payable	1,095,000		
Payments under capital lease obligation	(164,000)	(159,000)	(57,000)
<b>Net cash provided by financing activities</b>	<b>3,027,000</b>	<b>1,455,000</b>	<b>28,028,000</b>
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>2,371,000</b>	<b>(27,558,000)</b>	<b>(37,697,000)</b>
Cash and cash equivalents, beginning of year	1,571,000	29,129,000	66,826,000
<b>Cash and cash equivalents, end of year</b>	<b>\$ 3,942,000</b>	<b>\$ 1,571,000</b>	<b>\$ 29,129,000</b>
<b>Supplemental disclosures of non-cash investing and financing activities:</b>			
Accretion of dividends on Series A convertible and redeemable preferred stock	\$ 164,000	\$ 1,132,000	\$ 50,000
Amortization of offering costs for Series A convertible and redeemable preferred stock	142,000	1,375,000	6,000
Deferred compensation adjustment for stock options cancelled	849,000	1,056,000	1,533,000
Issuance of convertible notes payable to settle the inventory purchase commitments liability	3,505,000		
Deemed dividend for the imputed value assigned to the beneficial conversion feature on conversion of the Convertible Notes to Series B preferred stock and related common warrants	1,581,000		
Accretion of imputed value assigned to the beneficial conversion feature on Series A convertible and redeemable preferred stock and related common stock warrants	2,310,000	22,656,000	105,000
Common stock issued for settlement of inventory purchase commitment		5,400,000	
Conversion of Series A convertible and redeemable preferred stock into shares of common stock	2,926,000	24,427,000	
Conversion of convertible notes payable into Series B preferred stock	4,721,000		
Imputed value assigned to beneficial conversion feature on convertible notes payable	3,594,000		
Accretion of dividends on Series B preferred stock	195,000		
Fixed assets retired against restructuring accrual		365,000	
Cashless exercise of warrants			150,000
Capital lease obligation	75,000		
Warrants granted in connection with line of credit, net			328,000
<b>Supplemental disclosures of cash flow information:</b>			
Cash paid during the period for:			
Interest	\$ 145,000	\$ 108,000	\$ 222,000

See accompanying notes to consolidated financial statements.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. Nature of Business and Significant Accounting Policies**

Novatel Wireless, Inc., a Delaware corporation (the "Company") was founded in 1996 and is headquartered in San Diego, California. The Company is a provider of wireless broadband access solutions for the worldwide mobile communications market. The Company's broad range of products include wireless data modems and software for laptop PCs, embedded wireless modules for original equipment manufacturers, or OEMs, and ruggedized wireless data modems for public safety and telemetry applications. Through the integration of the Company's hardware and software, the Company's products are designed to operate on a majority of global wireless networks and provide mobile subscribers with secure and convenient access to data including corporate, public and personal information through the Internet and enterprise networks. The Company also offers software engineering and design services to the Company's customers to facilitate the use of the Company's products.

The Company's subsidiaries include wholly owned Novatel Wireless Solutions, Inc., incorporated in Delaware, and wholly owned Novatel Wireless Technologies Ltd. ("NWT"), incorporated in Alberta, Canada.

*Principles of Consolidation*

The consolidated financial statements include the accounts of Novatel Wireless, Inc. and its wholly owned subsidiaries Novatel Wireless Solutions, Inc. and NWT.

All significant intercompany transactions and balances are eliminated in consolidation. Certain reclassifications have been made to amounts included in the prior years' financial statements to conform to the presentation for the year ended December 31, 2003.

*Stock Split*

On October 29, 2002, a 1-for-15 reverse stock split that had been approved by the Company's stockholders became effective. All references in the consolidated financial statements to number of shares outstanding, price per share, and per share amounts have been retroactively restated to reflect the reverse stock split for all periods presented.

*Use of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues, expenses and disclosures of contingent assets and liabilities. Actual results could differ from these estimates. Significant estimates include inventory valuation, the use of option pricing models to establish values of equity instruments, the valuation of long – lived assets and restructuring accruals.

*Cash and Cash Equivalents*

Cash and cash equivalents include highly liquid investments with original maturities of three months or less. Cash and cash equivalents consist of money market and mutual funds and are recorded at market value, which approximates cost. Cash on hand was \$3.9 million at December 31, 2003 and \$1.6 million at December 31, 2002.

*Restricted Cash*

Restricted cash includes \$570,000 and \$50,000 at December 31, 2003 and 2002, respectively, serving as collateral for the letters of credit relating to certain operating leases. The Company also had \$65,000 and \$55,000 at December 31, 2003 and 2002, respectively, of restricted cash deposits serving as collateral for the Company's purchase card and merchant service program.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

*Transfers of Financial Assets*

During 2001 the Company adopted SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities. SFAS No. 140 applies a financial-components approach that focuses on control, whereby after a transfer of financial assets, an entity recognizes the financial and servicing assets it controls and the liabilities it has incurred, de-recognizes financial assets when control is surrendered and de-recognizes liabilities when extinguished. SFAS No. 140 also provides standards for distinguishing transfers of financial assets that are sales from transfers that are secured borrowings. Under the provisions of SFAS No. 140, the Company's activities in relation to their receivable sale agreement with its credit facility, as discussed in Note 5, are subject to these reporting standards.

*Inventories*

Inventories are stated at the lower of cost (first-in, first-out method) or market.

*Property and Equipment*

Property and equipment are stated at cost and depreciated using the straight-line method. Test equipment, computer equipment and purchased software, furniture and fixtures and product tooling are depreciated over lives ranging from two to five years and leasehold improvements are depreciated over the shorter of the related lease period or useful life. Amortization of assets held under capital leases is included in depreciation expense.

Expenditures for repairs and maintenance are expensed as incurred. Expenditures for major renewals and betterments that extend the useful lives of existing property and equipment are capitalized and depreciated. Upon retirement or disposition of property and equipment, any resulting gain or loss is recognized in the consolidated statement of operations.

*Intangible Assets*

Intangible assets include the costs of non-exclusive and perpetual worldwide software technology licenses and software development costs. License costs are amortized on a straight-line basis over the estimated useful lives of the assets, which range from 3 to 7 years and are amortized as the Company's products are sold. Software development costs for products sold (primarily firmware embedded in the Company's products) incurred after technological feasibility is established are capitalized in accordance with Statement of Financial Accounting Standards ("SFAS") No. 86, "Accounting for the Costs of Computer Software to Be Sold, Leased or Otherwise Marketed." Capitalized software development costs are amortized when products are available for general release to customers, using the greater of the amount computed using (a) the ratio that current gross revenues for the products bear to the total of current and anticipated future gross revenues for those products or (b) the straight-line method over the estimated useful lives of the products, which is currently five years.

*Long-Lived Assets*

The Company periodically evaluates the carrying value of the unamortized balances of its long-lived assets, including fixed and intangible assets, to determine whether impairment of these assets has occurred or whether a revision to the related amortization periods should be made. This evaluation is based on management's projections of the discounted future cash flows associated with each class of asset. If management's evaluation indicates that the carrying values of these assets are impaired, such impairment is recognized by a reduction of the applicable asset carrying value to its estimated fair value and expensed through operations. See Note 3 for Asset Impairment discussions.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

*Revenue Recognition*

The Company's revenue is generated from the sale of wireless modems to wireless operators, OEM customers, VARs and distributors and from development services contracts. Revenue from product sales is recognized upon the latest of transfer of title or shipment of the product to the customer. The Company records deferred revenue for cash payments received from customers in advance of when revenue recognition criteria are met. The Company grants price protection provisions to certain customers and tracks pricing and other terms offered to customers buying similar products to assess compliance with these provisions. To date, the Company has not incurred material price protection expenses. The Company establishes reserves for estimated product returns allowances in the period in which revenue is recognized. In estimating future product returns, the Company considers various relevant factors, including the Company's stated return policies and practices and historical trends. The Securities and Exchange Commission's Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements," ("SAB 101"), as amended by SAB No. 104, provides guidance on the application of generally accepted accounting principles to selected revenue recognition issues.

For our fixed price development services contracts, the Company recognizes revenue as services are rendered using labor output measures or the achievement of milestones as indicators of progress. Total estimated costs are based on management's assessment of costs to complete the project including periodic assessments of the progress achieved and the costs expended to date. To the extent that estimated costs materially change, revenue and profit recorded under the associated contract is adjusted accordingly. If total costs of completion are estimated to exceed the contract value, a loss is recognized in the period the loss is identified. Total revenue recognized for development services during 2003, 2002 and 2001 amounted to \$5.4 million, \$1.4 million and \$400,000, respectively. Total costs of revenue incurred for development services in 2003, 2002, 2001 amounted to \$4.3 million, \$1.4 million and \$320,000, respectively. The Company expects that, going forward, the level of engineering services revenue, as a percentage of total revenue, will not be significant.

During 2003, the Company entered into a joint development agreement containing multiple elements with one of its customers. These elements include development services and product shipments. Accordingly, the Company has separated its deliverables into units of accounting and recognized revenue on these deliverables, consistent with the provisions of Emerging Issues Task Force ("EITF") Issue No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables." Accordingly, \$6.2 million in cash payments received in 2003 were recorded as deferred revenue, which will be recognized as revenue when products are shipped or as services are rendered in the future.

*Research and Development Costs*

Research and development costs are expensed as incurred and consist of employee salaries and related costs, costs paid to third-party contractors and consultants, expendable equipment costs and equipment depreciation. Research and development costs also include allocations of corporate overhead expenses, consisting primarily of facilities costs. Revenue is recorded for research and development efforts that are reimbursed under development services contracts with the related costs reclassified as cost of revenues.

*Warranty Costs*

The Company accrues warranty costs based on estimates of future warranty related repairs or rework of products and services. The Company's warranty policy generally provides one or two-year coverage for product following the date of purchase. The Company's policy is to accrue the estimated cost of warranty coverage at the time the sale is recorded. In estimating its future warranty obligations the Company considers various factors, including the Company's stated warranty policies and practices, the historical frequency of claims, and the cost to replace or repair its products under warranty.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

*Income Taxes*

The Company accounts for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes," which requires the use of the asset and liability method of accounting for deferred income taxes. Under this method, deferred income taxes are recorded to reflect the tax consequences on future years of temporary differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end. If it is more likely than not that some portion or all of a deferred tax asset will not be realized, a valuation allowance is recognized.

*Stock-Based Compensation*

In December 2002, the FASB issued SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure*, an amendment of FASB Statement No. 123. This Statement provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. Additionally, the Statement amends the disclosure requirements of SFAS No. 123, *Accounting for Stock-Based Compensation*, to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results.

In accordance with SFAS No. 123, "Accounting for Stock-Based Compensation," as amended, the Company has elected to account for costs of stock-based employee compensation using the intrinsic value method prescribed in APB Opinion No. 25. Additionally, the Company discloses the pro forma effect on net loss and related per share amounts as if the fair-value method prescribed by SFAS No. 123 had been used to account for its stock-based employee compensation (see Note 8). The Company accounts for equity instruments issued to non-employees using the fair value method in accordance with the provisions of SFAS No. 123 and related interpretations. The weighted average fair value of the options granted during fiscal 2003, 2002 and 2001 was estimated as \$1.89, \$5.49 and \$17.73, respectively, on the date of grant using the Black-Scholes option pricing model with the following assumptions: no dividend yield, volatility of 123%, 116% and 104% for fiscal 2003, 2002 and 2001, respectively, risk-free interest rates between 3.0% and 6.45% and expected lives of four to five years.

Had compensation expense been determined based on the fair values at the dates of grant for the years ended December 31, 2003, 2002 and 2001 consistent with the provisions of SFAS No. 123, as amended by SFAS No. 148, the Company's net loss per share would have been reported as the pro forma amounts indicated below:

	Year Ended December 31,		
	2003	2002	2001
Net loss applicable to common stockholders, as reported	\$ (16,030,000)	\$ (53,481,000)	\$ (91,038,000)
Net loss applicable to common stockholders, pro forma	\$ (19,454,000)	\$ (58,763,000)	\$ (97,728,000)
Net loss per share, as reported	\$ (2.05)	\$ (10.47)	\$ (25.11)
Net loss per share, pro forma	\$ (2.49)	\$ (11.51)	\$ (26.95)

Based on announcements made by the Financial Accounting Standards Board, the Company expects to be required to use the fair value method to account for all stock based compensation beginning sometime in 2005.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

*Computation of Net Loss Per Share*

SFAS No. 128, "Earnings Per Share," requires companies to compute basic and diluted per share data for all periods for which a statement of operations is presented. Basic net loss per share is computed by dividing the net loss applicable to common stockholders by the weighted average number of common shares that were outstanding during the period. Diluted earnings per share is computed by giving effect to all potentially dilutive securities that were outstanding for the periods presented. Potentially dilutive securities consisting of options, warrants and convertible and redeemable preferred stock were not considered in the calculation of diluted earnings per share, as their impact would be antidilutive. For the periods presented, there is no difference between basic and diluted net loss per share. The difference between net loss and net loss applicable to common stockholders consists of accretion of dividends on convertible and redeemable preferred stock and amortization of offering costs for convertible and redeemable preferred stock. (see Note 7)

*Fair Value of Financial Instruments*

The carrying amounts of the Company's cash, accounts receivable, accounts receivable – related parties, accounts payable and accrued expenses approximate their fair value due to their short-term nature. The Company performs credit evaluations of key customers and management believes it is not exposed to significant credit risk on its accounts receivable in excess of established reserves. The carrying amount of the line of credit approximates fair value based on borrowing rates currently available to the Company. The fair value of the beneficial conversion on the Series A and Series B preferred stock and related common stock warrants issued were determined using the closing price of the Company's common stock at the date of issuance.

*Comprehensive Income*

SFAS No. 130, "Comprehensive Income," requires that all items recognized under accounting standards as components of comprehensive income be reported with the same prominence as other financial statements. The Company has no items requiring separate display of comprehensive income other than net loss.

*Segment Information*

SFAS No. 131, "Disclosures About Segments of an Enterprise and Related Information," requires public companies to report financial and descriptive information about their reportable operating segments. The Company identifies its operating segments based on how management internally evaluates separate financial information, business activities and management responsibility. The Company operates in a single business segment consisting of the development, manufacture and sale of wireless Internet products.

*Recent Accounting Pronouncements*

In May 2003, FASB issued SFAS No. 150 "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS No. 150 changes the accounting for certain financial instruments that, under previous guidance, could be classified as equity or "mezzanine" equity. SFAS No. 150 requires those instruments to be classified as liabilities (or assets in some circumstances) in the statement of financial position. Further, SFAS No. 150 requires disclosure regarding the terms of those instruments and settlement alternatives. The guidance in SFAS No. 150 is generally effective for all financial instruments entered into or modified after May 31, 2003, and is otherwise effective at the beginning of the first interim period beginning after June 15, 2003. For financial instruments created before the issuance date of this SFAS and still existing at the beginning of the interim period of adoption, transition shall be achieved by reporting the cumulative effect of a change in an accounting principle by initially measuring the financial instruments at fair

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

value or other measurement attribute required by this statement. The adoption of SFAS No. 150 did not have any impact on the Company's financial position or results of operations.

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities". This statement amends and clarifies the financial accounting and reporting requirements, originally established in SFAS No. 133, for derivative instruments and hedging activities. SFAS No. 149 provides greater clarification of the characteristics of a derivative instrument so that contracts with similar characteristics will be accounted for consistently. This statement is effective for contracts entered into or modified after June 30, 2003, as well as for hedging relationships designated after June 30, 2003, excluding certain implementation issues that have been effective prior to this date under SFAS No. 133. The adoption of this statement has not had any impact on the Company's operating results or financial position.

In November 2002, the FASB issued Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness to Others, an interpretation of FASB Statements No. 5, 57 and 107 and a rescission of FASB Interpretation No. 34." This Interpretation elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under guarantees issued. The Interpretation also clarifies that a guarantor is required to recognize, at inception of a guarantee, a liability for the fair value of the obligation undertaken. The initial recognition and measurement provisions of the Interpretation are applicable to guarantees issued or modified after December 31, 2002 and did not have a material effect on the Company's consolidated financial statements. The disclosure requirements are effective for financial statements of interim or annual periods ending after December 15, 2002.

In January 2003, the FASB issued Interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46), which addresses the consolidation of certain entities (variable interest entities, or VIE's) in which an enterprise has a controlling financial interest through other than voting interests. FIN No. 46 requires that a variable interest entity be consolidated by the holder of the majority of the expected risks and rewards associated with the activities of the variable interest entity. FIN 46 was effective for VIE's entered into prior to February 1, 2003 in periods beginning after June 15, 2003. The adoption of FIN 46 did not have a material impact on the Company's consolidated financial condition or results of operations. In January 2004, the FASB issued a revision to FIN 46 (FIN 46R), to clarify some requirements and add new scope exceptions. The revised guidance is effective for the first reporting period beginning after December 15, 2003. The adoption of the provisions of FIN 46R is not expected to have any impact on the Company's consolidated financial condition or results of operations.

In November 2002, the EITF issued EITF Issue No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables." EITF Issue No. 00-21 addresses how to determine whether a revenue arrangement involving multiple deliverables contains more than one unit of accounting for the purposes of revenue recognition and how the revenue arrangement consideration should be measured and allocated to the separate units of accounting. EITF Issue No. 00-21 applies to revenue arrangements entered into after June 15, 2003. Novatel adopted the provisions of EITF Issue No. 00-21 as of July 1, 2003. During 2003, the Company entered into a joint development agreement containing multiple element arrangements with one of its customers. Accordingly, the Company has recognized revenue for the related services and product sales in accordance with the provisions of EITF Issue No. 00-21.

## **2. Recent Operational Developments**

### *Operational Overview*

The Company has incurred significant costs to develop its technologies and products. These costs have exceeded total revenue. As a result, the Company has incurred losses in each year since inception. As of

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

December 31, 2003, the Company had an accumulated deficit of \$246.4 million and working capital of \$2.3 million. During the year ended December 31, 2003, the Company incurred a net loss applicable to common stockholders of \$16.0 million. Also during 2003, the Company raised additional equity and debt financing of \$5.4 million and, subsequent to December 31, 2003, an additional \$7.5 million in equity financing was raised (See Note 7). At December 31, 2003, the Company had approximately \$3.9 million in cash and cash equivalents. There were no outstanding borrowings under the line of credit as of December 31, 2003. Management intends to continue executing a plan to improve the Company's operating results and financial condition. The plan includes strengthening sales initiatives, improving gross margins and continuing to cut other costs as a percentage of sales.

On August 1, 2003, the Company and Lucent Technologies, Inc. ("Lucent") amended an existing joint development agreement and an existing supply agreement between them pertaining to UMTS technology products. As amended, the contracts provide that, subject to certain terms, conditions and limitations, Lucent could place significant purchase orders over the period of the contract, which commenced in the fourth quarter of 2003. Although management is confident of the Company's ability to generate future profitable sales of UMTS, CDMA and GPRS products, there can be no assurance that the sales of these products will be made at volumes sufficient to generate enough cash flow to cover the Company's operating expenses. Failure to generate significant revenue from new or existing products, whether due to lack of market acceptance, problems associated with initial production of new products, competition, technological change or the inability to reduce manufacturing and/or operating costs, will further adversely impact the Company's cash flows, financial condition and results of operations.

### 3. Restructuring Charges and Asset Impairments

As a result of the adverse economic developments in the Company's industry sector, the Company has continuously reduced its operating costs, primarily through employee layoffs and facility consolidations, throughout 2001, 2002 and 2003. Consequently, restructuring charges have been recorded totaling \$828,000 in 2003, \$2.7 million in 2002 and \$7.1 million in 2001. There were 12 employee separations during 2003, 33 employee separations during 2002 and 183 employee separations during 2001. During 2002, the Company recorded an impairment charge in the amount of \$870,000 for a software license that was no longer being used as a result of the Company's decision not to pursue further development of the technology related to this license.

The following table displays the activity and balances of the restructuring accrual from January 1, 2002 to December 31, 2003:

	<u>Employee Termination</u>	<u>Facility Closings</u>	<u>Asset Impairments</u>	<u>Total</u>
<b>2002</b>				
Balance – January 1, 2002	\$ 184,000	\$ 1,215,000	\$ 365,000	\$ 1,764,000
Charges	778,000	1,002,000	870,000	2,650,000
Cash payments	(867,000)	(981,000)	—	(1,848,000)
Asset impairments	—	—	(1,235,000)	(1,235,000)
Balance – December 31, 2002	<u>\$ 95,000</u>	<u>\$ 1,236,000</u>	<u>\$ 0</u>	<u>\$ 1,331,000</u>
<b>2003</b>				
Charges	\$ 336,000	\$ 492,000	—	\$ 828,000
Cash payments	(431,000)	(597,000)	—	(1,028,000)
Foreign exchange loss	—	91,000	—	91,000
Balance – December 31, 2003	<u>\$ 0</u>	<u>\$ 1,222,000</u>	<u>\$ 0</u>	<u>\$ 1,222,000</u>

Cash payments for facility consolidations of \$1.2 million are expected to be paid ratably over the next 45 months.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**4. Financial Statement Details***Inventories*

Inventories consist of the following:

	December 31,	
	2003	2002
Finished goods	\$ 1,576,000	\$ 3,036,000
Raw materials and components	773,000	1,214,000
	\$ 2,349,000	\$ 4,250,000

The Company determined that certain components in inventory were impaired due to low demand for the product. In 2003, the Company recorded charges for an additional \$2.0 million for excess and obsolete raw material components and finished goods. All inventory write-downs are classified in "Cost of revenue" in the accompanying consolidated statements of operations.

During 2002, the Company recorded a charge to write-off \$2.5 million of raw material components and finished goods on hand that were considered excess or obsolete, which was offset by \$1.5 million for the sale of inventory that had been previously written-off, resulting in a net write-off of \$1.0 million.

During 2001, the Company recorded charges to write-off \$34.5 million of excess or obsolete inventory on hand and under purchase commitments.

*Property and Equipment*

Property and equipment consists of the following:

	December 31,	
	2003	2002
Test equipment	\$ 6,860,000	\$ 8,240,000
Computer equipment and purchased software	5,219,000	6,259,000
Furniture and fixtures	1,075,000	1,433,000
Product tooling	1,405,000	1,560,000
Leasehold improvements	316,000	554,000
	14,875,000	18,046,000
Less – accumulated depreciation and amortization	(12,960,000)	(13,945,000)
	\$ 1,915,000	\$ 4,101,000

Depreciation expense was \$2,474,000, \$3,841,000 and \$4,596,000 for the years ended December 31, 2003, 2002 and 2001, respectively. At December 31, 2003 and 2002, assets held under capital leases had a net book value of \$82,000 and \$123,000, respectively, net of accumulated amortization of \$564,000 and \$480,000, respectively.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

*Intangible Assets*

Intangible assets consists of the following:

	December 31,	
	2003	2002
CDMA licenses	\$ 2,906,000	\$2,561,000
UMTS / GPRS licenses	3,829,000	3,384,000
	6,735,000	5,945,000
Less – accumulated amortization	(2,106,000)	(891,000)
	<u>\$ 4,629,000</u>	<u>\$5,054,000</u>

*Accrued Expenses*

Accrued expenses consist of the following:

	December 31,	
	2003	2002
Royalties	\$ 493,000	\$ 112,000
Payroll and related	442,000	641,000
Product warranty and sales returns reserve	25,000	206,000
Professional fees	75,000	69,000
Other	144,000	238,000
	<u>\$ 1,179,000</u>	<u>\$ 1,266,000</u>

**5. Line of Credit**

Effective in November 2002, the Company's credit facility with a bank was amended to allow the Company to borrow up to the lesser of \$5 million or 65% of eligible accounts receivable balances. In April 2003, this facility was amended to include an accounts receivable purchase facility pursuant to which the Company may factor at any given time up to 75% of certain accounts receivable invoices, up to a maximum of \$3 million in combined invoices. In October of 2003, the facility was amended such that only certain accounts receivable may be purchased up to a maximum aggregate amount of \$6 million and the 65% of eligible accounts receivable portion of the agreement was terminated. In December 2003, the remaining accounts receivable purchase facility was amended again to increase the borrowing availability to \$6.7 million and to extend the expiration date to November 2004. This credit facility bears interest at 1.5% per month when utilized. As of December 31, 2003, no borrowings were outstanding under this facility. The amount available under this facility at December 31, 2003 was approximately \$6.3 million.

In connection with initially entering into this facility, the Company issued warrants to purchase 58,762 shares of the Company's common stock at an exercise price of \$7.06, as adjusted to date to reflect dilutive equity issuances made subsequent to November 2001, the initial date of the facility. The fair value of the warrants totaling \$358,000 was amortized as interest expense over the initial 12-month term of the facility. These warrants expire on November 29, 2008 and may be exercised using a cashless exercise feature in which the number of shares issued would be calculated by dividing the intrinsic value of the warrants on the date of exercise by the fair market value of a share of common stock on the date of exercise. In February 2004, all these warrants were exercised.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**6. Convertible and Redeemable Preferred Stock**

In December 2001, the Company received aggregate net proceeds of approximately \$25.9 million, from the issuance of 27,172 shares of Series A convertible and redeemable preferred stock ("Series A preferred stock"), which are convertible at any time and without the need to pay any additional consideration into Common Shares (2,356,893 as of December 31, 2001). Warrants to acquire 705,765 common shares (the "Investor Warrants") were issued in conjunction with the Series A preferred stock shares. All of the securities sold in the 2001 Private Placement were sold solely to accredited investors, as defined in Rule 501 of Regulation D pursuant to the Securities Act of 1933, as amended. Each share of Series A preferred stock is entitled to receive cumulative dividends at a rate of 6.5% per annum. In addition, each share of Series A preferred stock is entitled to a liquidation preference of \$1,000, plus any accrued but unpaid dividends thereon. The Series A preferred shares are convertible, at the option of the holder at any time, at a conversion price of \$11.55 per share. As of December 31, 2003, 26,147 shares of Series A preferred stock had been converted into 2,368,147 shares of common stock, and there were 1,025 Series A preferred stock shares outstanding, which are convertible into 100,990 common shares including accumulated dividends to date thereon which are payable in the form of additional shares of common stock at the time of conversion.

The conversion price per common share of \$11.55 represents a 13.5% discount from the average quoted per share price of the common stock for the 20 trading-day period ending December 12, 2001, the day the commitment letter for the offering of the Series A preferred stock was executed. On the date of issuance of the Series A preferred stock the difference between the conversion price per common share and the closing price of the Company's common stock amounted to \$6.75 per share. As a result of this difference, the Company recorded the sale of preferred stock and issuance of warrants measured at fair value pursuant to the guidance in SFAS No. 123 and EITF 00-27. The Company used the fair value method in determining the value of the beneficial conversion feature at the date of issuance of approximately \$21.4 million. Pursuant to SFAS 123, the Company measured the fair value of the warrants issued in conjunction with the Series A preferred stock at the date of issuance to be approximately \$4.5 million. The terms of the Series A preferred stock include a redemption feature effective on a change of control or the seventh anniversary of the issuance (December 2008), in each case provided there are funds legally available for such purpose, and a conversion discount from fair market value of the common stock at the time of issuance. Accordingly, the value of the discount plus the value of the detachable warrants will be ratably accreted as dividends during the seven-year period until the redemption rights are effective, or immediately in the period in which conversion occurs. Because the Series A Preferred Stockholders have the right to require the Company to redeem the shares on the seventh anniversary of the issuance (December 2008) or otherwise the shares are not included as a component of stockholders' equity.

**7. Stockholders' Equity**

*Recent Financing*

The Company has sustained substantial losses from operations in each period since its inception and has used substantially all of its available cash resources to fund the operating losses.

In January 2004, the Company successfully raised aggregate net proceeds of approximately \$7.5 million, net of fees to the placement agent and offering costs, from the issuance of 1,142,855 shares of Common Stock. Warrants to acquire 228,565 common shares at a price of \$8.83, expiring on January 15, 2009, were also issued in conjunction with this offering.

As part of management's plan to improve the Company's financial condition, on March 12, 2003, following deliberation and approval by the Company's Board of Directors, the Company entered into a series of agreements, including a Securities Purchase Agreement (the "Purchase Agreement") with a group of investors (the "Investors") in connection with the private placement of \$3.25 million of convertible debt and equity securities, and the issuance of up to \$3.505 million of convertible debt securities in satisfaction of outstanding

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Company obligations to a third party. As a result of these agreements, the Company completed the following transactions, which are collectively referred to as the “Private Placement Transactions”:

- On March 13, 2003, the Company received cash of \$1.1 million, net of \$100,000 of transaction costs, in exchange for issuing \$1.2 million of secured subordinated convertible promissory notes (the “Initial Convertible Notes”), convertible subject to stockholder approval into newly authorized shares of the Company’s Series B convertible preferred stock (“Series B Preferred Stock”), which approval the Company received on May 2, 2003. These notes automatically converted into 1,216 shares of Series B convertible preferred stock on May 14, 2003 following stockholder approval of the Private Placement Transactions. Additionally, warrants were granted to the Investors to purchase an aggregate of 857,143 shares of Common Stock at an exercise price of \$0.70 per share;
- On May 14, 2003, the Company issued and sold 2,050 additional shares of Series B Preferred Stock and warrants to purchase an aggregate of 732,198 shares of Common Stock at an exercise price of \$0.70 per share in exchange for \$2.05 million in cash, which was reduced by approximately \$400,000 of transaction costs to \$1.6 million net proceeds; and
- On May 14, 2003, the Company issued \$3.505 million of secured subordinated convertible non-interest bearing promissory notes (the “Additional Convertible Notes”) and warrants to purchase an aggregate 1,251,786 shares of Common Stock at an exercise price of \$0.70 per share to the Investors in satisfaction of the Company’s indebtedness to Sanmina – SCI Corporation which the Investors acquired from Sanmina (the “Sanmina Obligations”). Unless earlier converted at the option of the respective holder, the Additional Convertible Notes were structured to automatically convert into 3,505 shares of Series B Preferred Stock at the rate of \$400,000 on each of August 14, 2003, November 14, 2003 and February 14, 2004, and the remaining balance on May 14, 2004. The Additional Convertible Notes were structured to convert into a number of shares of Series B Preferred Stock equal to the total amount outstanding thereon at the time of conversion divided by \$1,000. On August 14, 2003, as scheduled, \$400,000 of Additional Convertible Notes converted into 400 shares of Series B Preferred Stock. On November 14, 2003, as scheduled, \$400,000 of Additional Convertible Notes converted into 400 shares of Series B Preferred Stock. In December 2003, the remaining \$2.7 million converted into 2,705 shares of Series B Preferred Stock.

Each share of Series B preferred stock is entitled to receive cumulative dividends at a rate of 8% per annum which the Company is entitled to pay by means of issuing additional shares of common stock to the holder thereof. The Series B preferred stock is convertible at any time into the number of common shares equal to the total amount outstanding plus accrued dividends to date divided by \$0.70. In addition, each share of Series B preferred stock is entitled to a liquidation preference equal to 1.5 times the sum of the initial purchase price of \$1,000 plus all accrued but unpaid dividends thereon (the Liquidation Preference). The terms of the Series B preferred stock also include a redemption feature effective at the option of the holders upon the seventh anniversary of the date of issuance or upon a change in control of the Company, including the acquisition by a person or group of beneficial ownership of more than 50.0% of the voting power of the Company, whereby holders of Series B preferred stock then outstanding could require the Company to redeem the Series B preferred shares from funds legally available therefore at a redemption price per share equal to the Liquidation Preference. Effective on the original transaction date, the holders of Series B Preferred Stock voluntarily, permanently and unconditionally waived their right to obligate the Company to redeem their shares of Series B Preferred Stock except for the right to redeem in the event of a change in control of the Company. However, the Company’s authorized capital includes unissued “blank check” preferred stock, the issuance of which may be approved by the board of directors without the prior consent of the stockholders of the Company and which can be used to effectively prevent a change of control. As a result, the Company does not expect to redeem any of its Series A or Series B preferred stock in the foreseeable future. However, in the event the Company’s board of directors approves a merger or does not otherwise act to prevent a

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

change of control through the use of the Company's authorized and unissued preferred stock, the redemption features could be triggered. As of December 31, 2003, the Company's total redemption obligation would have equaled \$6.0 million.

The Initial Convertible Notes and the Additional Convertible Notes had a conversion price per common share of \$0.70. This conversion price was based on the lower of the five-day trailing average closing bid price of the Company's common stock at the time that the definitive agreement was signed, or \$0.70. On the date of issuance of the Initial Convertible Notes, the difference between the conversion price per common share and the closing price of the Company's common stock amounted to \$0.33 per share. The fair value of the warrants was determined using the Black-Scholes option-pricing model with the following assumptions: risk free interest rate of 3.5%, volatility of 116% and expected lives of four years. The proceeds from the Initial Convertible Notes allocable to the warrants was \$400,000 and was determined based on the relative fair values of the debt securities issued and warrants granted. In accordance with EITF 98-5, as amended by EITF 00-27, the intrinsic value of the beneficial conversion feature at the date of issuance was approximately \$1.1 million. During the quarter ended June 30, 2003, 100% of the Initial Convertible Notes were converted into Series B Preferred Stock. As a result of such conversion, the remaining value of the beneficial conversion feature of approximately \$1.1 million was recognized as non-cash interest expense.

On May 14, 2003, the date of issuance of the Additional Convertible Notes, the difference between the conversion price per common share of the Additional Convertible Notes and the closing price of the Company's common stock amounted to \$0.21 per share. The fair value of the warrants was determined using the Black-Scholes option-pricing model with the following assumptions: risk free interest rate of 3.5%, volatility of 116% and expected lives of four years. The proceeds from the Additional Convertible Notes allocable to the warrants was \$700,000 and was determined based on the relative fair values of the debt securities issued and warrants granted. In accordance with EITF 98-5, as amended by EITF 00-27, the intrinsic value of the beneficial conversion feature at the date of issuance was approximately \$1.8 million. The \$1.8 million, together with the \$700,000 fair value of the warrants granted, was being accreted ratably over the four-year life of the Additional Convertible Notes. However, because all of the Additional Convertible Notes were converted into Series B preferred stock in 2003, the Company recognized the entire \$2.5 million in non-cash interest expense during the year ended December 31, 2003.

On May 14, 2003, the date of initial issuance of the Series B Preferred Stock, the difference between the conversion price per common share of the Series B Preferred Stock and the closing price of the Company's common stock amounted to \$0.21 per share. The fair value of the warrants was determined using the Black-Scholes option-pricing model with the following assumptions: risk free interest rate of 3.5%, volatility of 116% and expected lives of four years. The proceeds from the Series B Preferred Stock allocable to the warrants was \$300,000 and was determined based on the relative fair values of the equity securities issued and warrants granted. In accordance with EITF 98-5, as amended by EITF 00-27, the intrinsic value of the beneficial conversion feature at the date of issuance was approximately \$1.3 million. As the Series B Preferred Stock is immediately convertible, the \$1.3 million, together with the \$300,000 fair value of the warrants granted was accounted for as a dividend in the second quarter of 2003. This \$1.6 million deemed dividend is therefore included in the net loss applicable to common stockholders for the year ended December 31, 2003.

On March 12, 2003, concurrent with the Purchase Agreement, the Investors and Sanmina entered into an agreement pursuant to which, subject to certain terms and conditions, Sanmina agreed to sell to the Investors, and the Investors agreed to purchase from Sanmina, (herein, the "Sanmina Purchase") the Sanmina Obligation at a discount. In order to facilitate the Sanmina Purchase, Sanmina granted the Company forbearance from its obligation to make payments to Sanmina until the earlier of the Sanmina Purchase or August 1, 2003. On May 7, 2003, the Investors finalized the Sanmina Purchase and as a result, Sanmina is no longer a creditor of the

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Company. Under the terms of the Sanmina Purchase, Sanmina refunded to the Company \$457,000 in cash primarily for payments made to Sanmina from February 2003 to March 12, 2003. In return for obtaining this payment forbearance, the Company issued Sanmina a warrant to purchase 150,000 shares of the Company's Common Stock at an exercise price of \$0.68 per share at the time of issuance. The value of the warrants of approximately \$79,000, determined using the Black-Scholes option-pricing model was recognized as non-cash interest expense during the year ended December 31, 2003. In January 2004, the parties amended the warrant exercise provision and Sanmina exercised the warrant for cash at an exercise price of \$0.68 per share.

In December 2003, 2,068 shares of Series B Preferred Stock were converted into 3,074,657 shares of common stock. During 2003, the Company accrued approximately \$195,000 in dividends relating to the outstanding Series B Preferred Stock.

*Recent Warrant Exercises*

During 2003, the Company received aggregate proceeds of approximately \$2.5 million in connection with the issuance of 2,370,732 shares of common stock upon the exercise of certain outstanding warrants.

*Other Financing Activities*

In September 2002, the Company successfully raised aggregate net proceeds of approximately \$2.4 million, net of fees to the placement agent and offering costs, from the issuance of 985,658 shares of Common Stock. Warrants to acquire 501,209 common shares at a price of \$3.60, expiring on March 12, 2006, were also issued in conjunction with this offering.

*Warrants*

The Company has issued warrants to purchase shares of the Company's capital stock to various investors and lenders as approved by its board of directors.

A summary of warrant activity is as follows:

	December 31,					
	2003		2002		2001	
	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
Outstanding, beginning of year	1,908,438	\$ 11.71	1,430,095	\$ 17.70	702,806	\$ 29.40
Granted	2,991,072	0.70	506,511	3.66	743,122	17.70
Cancelled	(52,420)	21.30	(28,168)	2.79	—	—
Exercised	(2,370,732)	1.07	—	—	(15,833)	17.40
<b>Outstanding, end of year</b>	<b>2,476,358</b>	<b>\$ 5.94</b>	<b>1,908,438</b>	<b>\$ 11.71</b>	<b>1,430,095</b>	<b>\$ 17.70</b>

In connection with the Private Placement Transactions in March and May 2003, the Company issued warrants to buy 2,841,072 shares of common stock. These warrants may be exercised at \$0.70 per share at any time up to September 12, 2008 for 857,141 warrants and November 14, 2008 for 1,983,931 warrants. Under the fair value method, the value of these warrants at the date of issuance was determined using the Black-Scholes option-pricing model with the following assumptions: risk free interest rate of 3.5%, volatility of 116% and expected lives of four years. The proceeds from the Private Placement Transactions

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

allocable to the warrants was \$1,400,000 and was determined based on the relative fair values of the debt securities issued and warrants granted.

In connection with the common stock issuance in September 2002, the Company issued warrants to buy 501,209 shares of common stock. These warrants may be exercised at \$3.60 per share at any time between March 12, 2003 and March 12, 2006. Under the fair value method, the value of these warrants at the date of issuance was nominal and, accordingly, no value has been assigned to them.

In connection with the Series A preferred stock financing in December 2001 (see Note 6), the Company issued to the purchasers of the Series A preferred stock warrants exercisable for the purchase of 705,765 newly- issued shares of common stock. These warrants may be exercised at \$18 per share at any time up to December 21, 2005. The Company estimated the fair market value of these warrants at the date of issuance to be \$4,512,000, which will be ratably accreted in dividends and recorded as a component of Additional Paid in Capital over a seven year period until the redemption rights on the Series A redeemable convertible preferred stock are effective, or immediately in the period in which conversion of the Series A Preferred Stock into shares of common stock occurs.

In connection with the Company's line of credit facility, the Company issued warrants to buy 58,762 shares of common stock, as adjusted pursuant to the antidilution provision of the warrant. These warrants may be exercised at \$7.06 per share, adjusted per warrant terms, at any time up to expiration on November 29, 2008. Under the fair value method, the value of these warrants at the date of issuance was \$358,000, which were amortized over the term of the facility. These warrants may be exercised at \$9.72 per share, adjusted per warrant terms, at any time up to expiration on November 29, 2008. Under the fair value method, the value of these warrants at the date of issuance was nominal and, accordingly, no value has been assigned to them.

*Common Shares Reserved for Future Issuance*

The Company has reserved shares of common stock for future issuance as of December 31, 2003 as follows:

Stock options outstanding	3,794,252
Stock options available for future grant	1,667,991
Stock warrants outstanding	2,476,358
Conversion of Series A Preferred Stock	100,990
Conversion of Series B Preferred Stock	6,998,399
Shares available under the Employee Stock Purchase Plan	83,115
	<hr/>
Total reserved shares for issuance of common stock	15,121,105

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

*Net Loss Applicable to Common Stockholders*

A reconciliation of the net loss to net loss applicable to common stockholders is as follows:

	Year Ended December 31,		
	2003	2002	2001
Net loss	\$ (11,638,000)	\$ (28,318,000)	\$ (90,877,000)
Adjustments to net loss used in computing basic and diluted net loss applicable to common stockholders:			
Accretion of dividends on convertible and redeemable preferred stock	(164,000)	(1,132,000)	(50,000)
Accretion of dividends on Series B Preferred Stock	(195,000)	—	—
Amortization of offering costs for convertible and redeemable preferred stock	(142,000)	(1,375,000)	(6,000)
Accretion of imputed value assigned to the beneficial conversion feature of Series A convertible and redeemable preferred stock and related common stock warrants	(2,310,000)	(22,656,000)	(105,000)
Imputed value of beneficial conversion feature relating to the issuance of preferred stock	(1,581,000)	—	—
	\$ (4,392,000)	\$ (25,163,000)	\$ (161,000)
<b>Total</b>	<b>\$ (16,030,000)</b>	<b>\$ (53,481,000)</b>	<b>\$ (91,038,000)</b>

**8. Stock Option and Employee Stock Purchase Plans**

*Stock Option Plans*

The Company's amended and restated 1997 stock option plan (the "1997 Plan") for employees authorizes the granting of options for up to 800,000 shares of the Company's common stock. Generally, options are to be granted at prices equal to at least 100% of the fair value of the stock on the date of grant, expire not later than ten years from the date of grant and vest ratably and annually over a four-year period following the date of grant. From time to time, as approved by the Company's Board of Directors, options with differing vesting terms have also been granted. The 1997 Plan provides that any shares issued come from the Company's authorized but unissued or reacquired common stock. In September, 2000 we suspended making any further grants pursuant to the 1997 Plan and contributed the remaining shares then reserved for issuance under such plan to the 2000 Plan.

In July 2000, the Company's Board of Directors approved and in September 2000, the Company's stockholders approved the 2000 Stock Incentive Plan (the "2000 Plan") authorizing the granting of options for up to 1,100,000 shares of the Company's common stock, including the 800,000 shares authorized under the 1997 Plan, plus an automatic annual increase, to be added on the first day of the fiscal year beginning in 2001, equal to the lesser of (a) 3.0% of the outstanding shares on the last day of the prior fiscal year, (b) 100,000 shares, or (c) such lesser number of shares as may be determined by the Board in its sole discretion. The Company implemented the 2000 Plan upon the effective date of the Company's initial public offering in November 2000. Under the 2000 Plan, generally 25% of each option grant vests on the first anniversary of the grant date. Thereafter, the balance of the grants vest monthly over a 36-month period of the grant holders continued employment or service to the Company.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

In June 2003, the stockholders of the Company approved the amendment of the 2000 Plan to increase the number of shares reserved for issuance under the plan by 4,222,743 shares of the Company's common stock.

A summary of stock option activity is as follows:

	Options Outstanding	Options Available for Grant	Weighted Average Exercise Price Per Share
Options outstanding, January 1, 2001	696,719	326,463	\$ 79.65
New authorized options	—	100,000	—
Granted	169,500	(169,500)	\$ 39.45
Exercised	(27,657)	—	\$ 13.65
Cancelled	(229,439)	229,439	\$ 75.30
<b>Options outstanding, December 31, 2001</b>	<b>609,123</b>	<b>486,402</b>	<b>\$ 73.95</b>
New authorized options	—	100,000	—
Granted	576,942	(576,942)	\$ 8.28
Exercised	(18,268)	—	\$ 13.12
Cancelled	(192,314)	192,314	\$ 54.65
<b>Options outstanding December 31, 2002</b>	<b>975,483</b>	<b>201,774</b>	<b>\$ 39.96</b>
New authorized options	—	4,322,743	—
Granted	3,690,013	(3,690,013)	\$ 2.39
Exercised	(37,757)	—	\$ 5.56
Cancelled	(833,487)	833,487	\$ 28.91
<b>Options outstanding December 31, 2003</b>	<b>3,794,252</b>	<b>1,667,991</b>	<b>\$ 6.22</b>
<b>Exercisable, December 31, 2001</b>	<b>255,402</b>		<b>\$ 70.05</b>
<b>Exercisable, December 31, 2002</b>	<b>319,723</b>		<b>\$ 77.05</b>
<b>Exercisable, December 31, 2003</b>	<b>1,215,985</b>		<b>\$ 11.76</b>

Additional information relating to stock options outstanding and exercisable at December 31, 2003, summarized by exercise price is as follows:

Range of Exercise Prices	Outstanding Weighted Average			Exercisable Weighted Average	
	Shares	Life (Years)	Exercise Price	Shares	Exercise Price
\$ 0.95 – 2.23	913,421	9.00	\$ 1.23	359,084	\$ 1.39
\$ 2.40 – 6.39	2,599,687	9.49	2.74	652,026	2.65
\$10.65 – 29.25	184,508	7.20	17.48	127,369	17.64
\$40.00 – 193.13	96,636	6.73	125.49	77,506	126.76
	<b>3,794,252</b>			<b>1,215,985</b>	

During 2003, the Company issued options to purchase an aggregate of 3,690,013 shares of the Company's common stock to employees and the Company's non-employee directors. The vesting schedule for 3,497,013 of these options is generally 20% at 6 months from the vesting commencement date and 1/30th each month thereafter. For the 3,497,013 options granted, the vesting commencement date with respect to options granted to non-employee directors was November 20, 2002 and the vesting commencement date with respect to options granted to employees was June 26, 2003, and in the case of the Company's CEO, was January 13, 2003. The

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

vesting schedule for the remaining option grants was generally 25% at 1 year from the vesting commencement date and monthly thereafter for a total of 4 years. The vesting commencement date with respect to other options varied based on their issue dates.

The Company amortizes stock-based employee compensation over the vesting periods of the related options using the attribute method prescribed by FASB Interpretation No. 28 and SFAS No. 123. Under this method, each vested tranche of options is accounted for as a separate option grant awarded for services. Accordingly, the compensation expense is recognized over the period during which the services are provided. This method results in higher compensation expense in the earlier vesting periods of the related options.

In connection with certain option grants, the Company recorded \$30.3 million of gross deferred stock compensation in 2000. Amortization of stock-based compensation was \$738,000, \$3.6 million and \$10.4 million for the years ended December 31, 2003, 2002 and 2001, respectively. The Company expects to amortize the remaining \$142,000 in 2004, assuming no cancellations or additional stock option grants below fair value.

*Employee Stock Purchase Plan*

In July 2000, the Company's Board of Directors approved the 2000 Employee Stock Purchase Plan "ESPP" and in September 2000, the Company's stockholders approved the ESPP. The Company implemented the ESPP in 2001 following the completion of the initial public offering in November 2000. The ESPP, subject to certain limitations, permits eligible employees of the Company to purchase common stock, at a price equal to 85.0% of the lower of the fair market value on the first day of the offering period or the last day of each six-month purchase period, through payroll deductions of up to 10% of their annual compensation. The ESPP provides for the issuance of up to 100,000 shares of common stock, plus an automatic annual increase, to be added on the first day of the fiscal year beginning in 2001, equal to the lesser of (a) 0.5% of the outstanding shares on the last day of the prior fiscal year, (b) 18,000 shares, or (c) such lesser number of shares as may be determined by the Board in its sole discretion. If purchases of stock through the plan deplete this supply, the Company will limit, suspend or discontinue purchases under the plan until additional shares of stock are available. During 2003, the Company sold 16,372 shares under this plan and received \$15,000 in cash. During 2002, the Company sold 23,127 shares under this plan and received \$135,000 in cash.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**9. Income Taxes**

The Company's deferred tax assets and liabilities consist of the following:

	December 31	
	2003	2002
<b>Current deferred taxes:</b>		
Accounts receivable reserve	\$ 115,000	\$ 123,000
Accrued expenses	913,000	2,621,000
Inventory reserve	2,774,000	4,065,000
Other	133,000	133,000
	3,935,000	6,942,000
Deferred tax asset – current	3,935,000	6,942,000
Valuation allowance	(3,935,000)	(6,942,000)
	Net current deferred taxes	
<b>Long-term deferred taxes:</b>		
Depreciation and amortization	6,674,000	1,598,000
Deferred revenue	2,439,000	231,000
Net operating loss and credit carryforwards	52,958,000	51,115,000
	62,071,000	52,944,000
Deferred tax asset — noncurrent	62,071,000	52,944,000
Valuation allowance	(62,071,000)	(52,944,000)
	Net long-term deferred taxes	
<b>Net deferred income taxes</b>	\$	\$

Management has established a valuation allowance against its net deferred tax assets due to the uncertainty of the realization of such assets. Included in the deferred tax asset is approximately \$4.2 million, which relates to the Company's Canadian subsidiary. Also included in the deferred tax asset at December 31, 2003 is approximately \$1.3 million related to the Company's stock option plan. Realization of amounts related to this asset will be recorded in additional paid in capital.

At December 31, 2003, the Company has U.S. federal net operating loss carryforwards of approximately \$143.3 million, which expire at various dates through 2023. The Company has California net operating loss carryforwards of approximately \$43.8 million, which expire at various dates through 2013. The Company has Arizona net operating loss carryforwards of approximately \$3.9 million, which expire at various dates through 2008. In addition, the Company has Canadian net operating loss carryforwards of approximately \$5.7 million, which do not expire. As a result of ownership changes in 2003 (as defined by Section 382 of the Internal Revenue Code), the use of the Company's net operating losses will be limited in future years, and such limitation could be material.

It is the Company's intention to reinvest undistributed earnings of its foreign subsidiary and thereby indefinitely postpone their remittance. Accordingly, no provision has been made for foreign withholding taxes on United States income taxes which may become payable if undistributed earnings of the foreign subsidiary were paid as dividends to the Company.

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The provision for income taxes reconciles to the amount computed by applying the statutory federal income tax rate to income before provision for income taxes as follows:

	Year Ended December 31,		
	2003	2002	2001
Federal tax provision, at statutory rate	\$(3,957,000)	\$(9,628,000)	\$ (30,898,000)
State tax, net of federal benefit	(349,000)	(870,000)	(2,154,000)
Change in valuation allowance	6,120,000	8,371,000	29,401,000
Deferred compensation	273,000	1,316,000	4,144,000
Non-cash beneficial conversion charges	1,404,000	—	—
Adjustment to State net operating losses and capitalized research and development	(3,386,000)	—	—
Other	(105,000)	811,000	(493,000)
	\$ —	\$ —	\$ —

**10. Commitments and Contingencies**

*Operating and Capital Leases*

The Company leases its office space and certain equipment under non-cancelable operating and capital leases. Rental expense under operating leases in fiscal 2003, 2002 and 2001 was approximately \$1,680,000, \$1,935,000 and \$1,428,000, respectively. The minimum future lease payments under non-cancelable operating leases and future minimum capital lease payments as of December 31, 2003 are:

	Operating	Capital
2004	\$ 1,195,000	\$ 84,000
2005	751,000	—
2006	626,000	—
2007	469,000	—
<b>Total minimum lease payments</b>	<b>\$ 3,041,000</b>	<b>\$ 84,000</b>
Less — amount representing interest (at rates ranging from 9.9% to 20.3%)		(2,000)
Present value of net minimum lease payments		82,000
Less — current portion of capital lease obligations		(82,000)
<b>Obligations under capital leases, net of current portion</b>		<b>\$ —</b>

*Royalties*

The Company is required to make royalty payments for certain of its products shipped with purchased technology. In 2003, 2002 and 2001, the Company incurred royalty expense of \$1.9 million, \$745,000 and \$253,000, respectively.

*Employment Agreements and Contract Commitments*

In May 2001, the Company entered into management retention agreements with the Company's named executive officers. The agreements entitle those employees to enumerated severance benefits if, within 24 months following a change of control (or at the direction of an acquirer in anticipation of such an event), the Company terminates the employee's employment other than for cause or disability or the employee terminates his employment for good reason. These severance benefits include a payment of two times the sum of the employee's annual base salary then in effect and the applicable targeted annual bonus, continued employee

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

benefits, full acceleration of vesting of the employee's stock options, a tax equalization payment to eliminate the effects of any applicable excise tax, and the issuance to the employee of an option to purchase additional shares of the Company's common stock. As a condition of the March 12, 2003 Purchase Agreement (see Note 7), the remaining management retention agreements were terminated under mutual agreement between the named executive officers and the Company.

Effective January 13, 2003, the Company's then Chief Executive Officer was replaced and his employment was terminated without cause. His employment agreement with the Company provided that in the event that the Company terminated him without cause, he would be entitled to receive in a lump sum payment an amount equal to his annual base salary then in effect and all unvested options would immediately vest and become exercisable. In July 2003, the Company and the former Chief Executive Officer entered into a separation agreement and mutual general release pursuant to which the Company paid him a total of \$150,000 in full accord and satisfaction of the amounts payable under the employment agreement.

Effective October 31, 2002, the Company's then President and Chief Operating Officer, resigned his employment with the Company. Pursuant to the terms of his employment agreement, he received from the Company, Canadian \$250,000.

The Company also has arrangements with certain other key employees providing for four months salary payment in the event of termination without cause.

*Legal Matters*

The Company is from time to time party to various legal proceedings arising in the ordinary course of business. Based on evaluation of these matters and discussions with Company's counsel, the Company believes that liabilities arising from or sums paid in settlement of these existing matters will not have a material adverse effect on the consolidated results of operations or financial position.

**11. Segment Information and Concentrations of Risk**

*Segment Information*

The Company operates in the wireless data modem technology industry and all sales of the Company's products and services are made in this segment. Management makes decisions about allocating resources based on this one operating segment.

The Company has operations in the United States and Canada. The distribution of the Company's assets in the United States and Canada as of December 31, 2003 and 2002 are \$22.6 million and \$1.8 million, and \$21.3 million and \$2.7 million, respectively. For the years ended December 31, 2003 and 2002, approximately 23% and 11% of revenues were derived from international accounts, respectively.

*Concentrations of Risk*

Substantially all of the Company's revenues come from wireless Internet products. Any further decline in market acceptance of the Company's products or a further decline in the financial condition of the Company's existing customers may impair the Company's ability to operate effectively.

A significant portion of the Company's revenue comes from a small number of customers. The Company's top ten customers for the year ended December 31, 2003 and 2002 accounted for approximately 94.7% and

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

84.6%, respectively, of the Company's revenue. Two customers accounted for 55.0% and 29.8%, respectively, of 2003 revenues. One customer accounted for 46.5% of 2002 revenues. Two customers accounted for 13% and 12%, respectively, of 2001 revenues.

The Company's financial condition, results of operations and cash flows were adversely affected during fiscal 2002 and 2001 as a result of further slowing of demand for both wireless products and wireless access services for the transmission of data. The Company's business was particularly impacted adversely by the bankruptcy of Metricom in July 2001. Sales to Metricom accounted for 12.4% of the Company's revenue for the year ending December 31, 2001. In 2002, the Company received \$1.4 million in connection with the settlement of claims related to the Metricom bankruptcy. Additionally, the Company's business was impacted adversely by the bankruptcy of OmniSky, which filed for bankruptcy in December 2001. Sales to OmniSky accounted for 45.4% and 3.3% of the Company's revenue for the years ending December 31, 2000 and 2001.

**12. Related Parties**

The Company sells products to AirLink Communications, Inc. (AirLink), a wireless software infrastructure business, which integrates our modems into their products. AirLink's Chairman and principal stockholder is also a member of our Board of Directors and a stockholder of ours. Sales to AirLink were \$61,000 and \$47,000 for the year ended December 31, 2003 and 2002, respectively. Receivables from AirLink amounted to \$121,000 and \$276,000 as of December 31, 2003 and 2002, respectively.

In May 2001, the Company sold AirLink \$1.6 million of product on customary net 30 payment terms. When AirLink became delinquent, the Company accepted a secured promissory note requiring regular payments to the Company over time. AirLink's assets secured the note and AirLink's Chairman (Guarantor) executed and delivered to us a guarantee. AirLink made the first payment of \$300,000, plus accrued interest, on September 1, 2001, but subsequently became delinquent.

In September 2001, the Company sold AirLink \$1.1 million of additional product (of which Airlink returned approximately \$750,000) and entered into a second secured promissory note for payment. At December 31, 2002 and 2001, the aggregate receivable from AirLink under these notes was \$375,000 and \$393,000, respectively. During the first quarter of 2002, AirLink became delinquent in its repayments under the second note. In accordance with SAB No. 101, "Revenue Recognition in Financial Statements," we record revenue when the collection of a receivable becomes reasonably assured.

In May 2002, the parties combined both notes into a single secured \$950,000 promissory note under a debt restructuring. After initially performing, AirLink became delinquent. In January 2003, after evaluating the Company's legal alternatives, the Company made a written demand on the Guarantor for all past due amounts, which was unsuccessful. In October 2003, the Company obtained confessions of judgment from both AirLink and the Guarantor each in the amount of \$612,000, which was the outstanding indebtedness at the time. Airlink also agreed to pay the Company each month the greater of \$20,000 or 10% of its gross cash receipts from the previous month, and it put up a \$60,000 cash-backed standby letter of credit for us to draw upon if any delinquency recurred. No such further delinquency has occurred and AirLink's indebtedness to the Company at December 31, 2003 was \$496,000.

During 2002, the individual who serves as AirLink's Chairman of the Board performed certain consulting services for the Company in his individual capacity and was paid \$55,000. No consulting services were rendered by and no consulting payments were made to this individual in 2003. The Company sold products to Airlink on a prepayment basis in the amount of \$61,000 during 2003.

As of March 11, 2004, the remaining \$496,000 of the AirLink indebtedness was settled in full by AirLink through cash payments to the Company from AirLink of \$213,000, with the remaining balance settled primarily by

**NOVATEL WIRELESS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

an offset of trade payables owed by the Company to AirLink as a result of product purchases from AirLink during 2003 and 2004. Also, effective March 11, 2004, AirLink's chairman of the board, Mr. Steven Sherman, resigned as a member of the Company's Board of Directors.

The Company sells products to a subsidiary of Chinatron Group Holdings Limited. Mr. Horst J. Pudwill, one of the Company's directors and principal stockholders as a result of the Private Placement Transactions earlier this year (see Note 7 to the Consolidated Financial Statements), is also a director and stockholder of Chinatron. In addition, the chairman and chief executive officer of Chinatron participated in the Private Placement Transactions. Sales to Chinatron for the year ended December 31, 2003 and 2002 were \$702,000 and \$1,341,000 respectively.

On March 12, 2003 and on May 14, 2003, following the unanimous approval of our disinterested directors, the Company issued convertible debt and convertible equity securities to a group of investors in a private placement transaction. (See Note 7 for a description of this transaction.) Cornerstone Equity Investors, LLC (Cornerstone), a private equity investment firm that is one of the Company's principal stockholders, participated as an investor in these transactions. Messrs. Mark Rossi and Robert Getz, two of the Company's directors since December 1999, are managing directors of Cornerstone. Mr. Peter V. Leparulo, the Company's chief executive officer since January 13, 2003 and member of the Company's board since May 7, 2003, also participated as an investor in these transactions.

### 13. Retirement Savings Plan

The Company has a defined contribution 401(k) retirement savings plan (the "Plan"). Substantially all of the Company's U.S. employees are eligible to participate in the Plan after meeting certain minimum age and service requirements. Employees may make discretionary contributions to the Plan subject to Internal Revenue Service limitations. As of December 31, 2003, there are no provisions for employer contributions to the Plan. Participants are fully vested in all contributions to the Plan.

The Company has a Registered Retirement Savings Plan for its Canadian employees. Substantially all of the Company's Canadian employees are eligible to participate in the Plan. Employees make discretionary contributions to the plan subject to local limitations. Employer contributions amounted to \$69,000, \$116,000 and \$101,000 for the years ended December 31, 2003, 2002 and 2001, respectively.

### 14. Quarterly Financial Information (Unaudited)

The following is a summary of unaudited quarterly results of operations for the years ended December 31, 2003 and 2002.

	Quarter			
	First	Second	Third	Fourth
	(in thousands, except per share amounts)			
<b>2003:</b>				
Total revenues	\$ 7,489	\$ 7,659	\$ 8,063	\$ 10,604
Gross margin	1,223	(313)	2,190	2,824
Net loss applicable to common stockholders	(3,209)	(7,966)	(2,750)	(2,105)
Net loss per share	(0.46)	(1.12)	(0.34)	(0.23)
<b>2002:</b>				
Total revenues	\$ 7,272	\$ 7,731	\$ 5,905	\$ 7,964
Gross margin	553	420	1,401	(396)
Net loss applicable to common stockholders	(16,109)	(15,633)	(5,833)	(15,909)
Net loss per share	(4.07)	(3.16)	(1.11)	(2.54)

## Independent Auditors' Report

The Board of Directors  
Novatel Wireless, Inc.:

We have audited the accompanying consolidated balance sheets of Novatel Wireless, Inc. and subsidiaries as of December 31, 2003 and 2002, and the related consolidated statements of operations, stockholders' equity, and cash flows for the years then ended. In connection with our audits of the consolidated financial statements, we also have audited the financial statement Schedule II for the years ended December 31, 2003 and 2002. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits. The consolidated financial statements and financial statements schedule of Novatel Wireless, Inc. as of December 31, 2001, and for the year then ended were audited by other auditors who have ceased operations. Those auditors expressed an unqualified opinion on those consolidated financial statements and financial statement schedule, before the revision described in Note 1 to the consolidated financial statements, in their report dated February 1, 2002.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards 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. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Novatel Wireless, Inc. and subsidiaries as of December 31, 2003 and 2002, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the related financial statement Schedule II for the years ended December 31, 2003 and 2002, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed above, the consolidated financial statements of Novatel Wireless, Inc. and subsidiaries as of December 31, 2001, and for the year then ended were audited by other auditors who have ceased operations. As described in Note 1, these consolidated financial statements have been revised to retroactively reflect a 1-for-15 reverse stock split of the Company's common stock approved on October 29, 2002. In our opinion, the adjustments applied to retroactively reflect the 1-for-15 reverse stock split to these consolidated financial statements are appropriate. However, we were not engaged to audit, review, or apply any procedures to the consolidated financial statements of Novatel Wireless, Inc. as of December 31, 2001 and for the year then ended, other than with respect to such 1-for-15 reverse stock split and, accordingly, we do not express an opinion or any other form of assurance on those consolidated financial statements taken as a whole.

/s/ KPMG LLP

San Diego, California  
February 9, 2004, except  
for paragraph 6 of Note 12  
as to which the date is  
March 11, 2004

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This is a copy of the audit report previously issued by Arthur Andersen LLP in connection with Novatel Wireless, Inc.'s filing on Form 10-K for the year ended December 31, 2001. This audit report has not been reissued by Arthur Andersen LLP in connection with this filing on Form 10-K. The Consolidated Financial Statements included herein have been revised to retroactively reflect a 1-for-15 reverse stock split on the Company's common stock approved on October 29, 2002. See Exhibit 23.2 for further discussion. The consolidated balance sheets as of December 31, 2001 and 2000 and the consolidated statements of operations, stockholders' equity and cash flows for the years ended December 31, 2000 and 1999, referred to in this report has not been included in the accompanying financial statements.

### **REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS**

To Novatel Wireless, Inc.:

We have audited the accompanying consolidated balance sheets of Novatel Wireless, Inc. (a Delaware corporation) and Subsidiaries as of December 31, 2001 and 2000, and the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2001. 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 in accordance with auditing standards generally accepted in the United States. Those standards 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. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Novatel Wireless, Inc. and Subsidiaries as of December 31, 2001 and 2000, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. Schedule II — Valuation and Qualifying Accounts is presented for purposes of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. The schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, fairly states in all material respects the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

/s/ ARTHUR ANDERSEN LLP

San Diego, California

February 1, 2002 (Except with respect to the matters discussed in Note 15 as to which the date is February 22, 2002)

## SCHEDULE II

## NOVATEL WIRELESS INC.

Valuation and Qualifying Accounts  
For the Years Ended December 31, 2003, 2002 and 2001

	Balance At Beginning of Year	Additions Charged to Operations	Deductions From Reserves	Balance At End of Year
<b>Allowance for Doubtful Accounts:</b>				
December 31, 2003	\$ 333,000	\$ 148,000	\$ 170,000	\$ 311,000
December 31, 2002	294,000	39,000	—	333,000
December 31, 2001	253,000	114,000	\$ 73,000	294,000
<b>Warranty and Sales Returns Reserve:</b>				
December 31, 2003	206,000	—	181,000	25,000
December 31, 2002	466,000	—	260,000	206,000
December 31, 2001	675,000	—	209,000	466,000
<b>Deferred Tax Asset Valuation Allowance:</b>				
December 31, 2003	59,886,000	6,120,000	—	66,006,000
December 31, 2002	51,515,000	8,371,000	—	59,886,000
December 31, 2001	22,114,000	29,401,000	—	51,515,000

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
3.1(1)	Certificate of Incorporation.
3.2(4)	Certificate of Designation of Series A Convertible Preferred Stock.
3.3(1)	Bylaws.
4.1(2)	Specimen Common Stock Certificate.
4.2(4)	Specimen Series A Convertible Preferred Stock Certificate.
4.3(4)	Form of Common Stock Purchase Warrant issued in connection with the Company's Series A Convertible Preferred Stock Financing.
4.4(5)	Warrant to Purchase Stock, issued in connection with the Company's facility with Silicon Valley Bank.
4.5(5)	Form of Common Stock Purchase Warrant issued in connection with the Company's 1999 Series B Convertible Preferred Stock Financing.
4.6(5)	Form of Common Stock Purchase Warrant issued in connection with the Company's Series C Convertible Preferred Stock Financing.
4.7(5)	Form of Common Stock Purchase Warrant issued in connection with the Company's Debenture Financing.
4.8(5)	Form of Common Stock Purchase Warrant issued in connection with the Company's Series D Convertible Preferred Stock Financing.
4.9(7)	Form of Securities Purchase Agreement entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.10(7)	Form of Secured Convertible Subordinated Note issued in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.11(7)	Form of Secured Convertible Subordinated Note issued in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.12(7)	Form of Common Stock Purchase Warrant issued in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.13(7)	Form of Security Agreement entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
4.14(7)	Form of Certificate of Designation with respect to Series A Convertible Preferred Stock.
4.15(7)	Form of Certificate of Designation with respect to Series B Convertible Preferred Stock.
4.16(7)	Form of Registration Rights Agreement entered into in connection with the Company's 2003 Series B Convertible Preferred Stock Financing.
10.1(3)	1997 Stock Incentive Plan, as Amended and Restated.
10.2(6)	2000 Stock Incentive Plan, as Amended and Restated.
10.3(3)	2000 Employee Stock Purchase Plan.
10.4(2)	Amended and Restated Registration Rights Agreement, dated as of June 15, 1999, by and among Novatel Wireless, Inc. and some of its stockholders.

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<u>Exhibit Number</u>	<u>Description</u>
10.5(2)	Amended and Restated Investors' Rights Agreement, dated as of June 30, 2000, by and among Novatel Wireless, Inc. and some of its stockholders.
10.6(2)	Form of Indemnification Agreement between Novatel Wireless, Inc. and each of its officers and directors.
10.7(5)	Loan and Security Agreement, dated as of November 29, 2001, by and between the Company and Silicon Valley Bank.
10.8(5)	Silicon Valley Bank Registration Rights Agreement, dated as of November 29, 2001, by and between the Company and Silicon Valley Bank.
10.9(6)	Silicon Valley Bank Antidilution Agreement, dated as of November 29, 2001, by and between the Company and Silicon Valley Bank.
10.10(2)	Real Property Sublease dated as of July 7, 2000, by and between Sicor Inc. (formerly Gensia Sicor, Inc.) and Novatel Wireless, Inc., for 9360 Towne Centre Drive, San Diego, California.
10.11(2)	Real Property Lease, dated as of February 1, 1997, by and between Novatel Wireless Technologies Ltd. and Sun Life Assurance Company of Canada, for 6715 8th St., N.E., Calgary, Alberta.
*10.12(2)	Employment Agreement, dated as of July 24, 2000, by and between Novatel Wireless, Inc. and John Major.
*10.13(2)	Employment Agreement, dated as of August 21, 1996, by and among Novatel Wireless, Inc., Novatel Wireless Technologies Ltd. and Ambrose Tam.
10.14(6)	Form of Change of Control Letter Agreement, dated as of May 11, 2001, by and between Novatel Wireless, Inc. and several executives of Novatel Wireless, Inc.
10.15(2)	Standard Manufacturing Agreement, dated as of August 8, 2000, by and between Novatel Wireless, Inc. and Solectron de Mexico, S.A. de C.V.
10.16(2)	First Amendment to Employment Agreement, dated as of September 22, 2000, by and among Novatel Wireless, Inc., Novatel Wireless Technologies Ltd. and Ambrose Tam.
10.17(6)	Settlement Agreement and Mutual General Release, dated as of January 12, 2002 by and between Novatel Wireless, Inc. and Sanmina-SCI Corporation and Sanmina Canada ULC.
10.18(6)	Security Agreement, dated as of January 12, 2002 executed by Novatel Wireless, Inc. in favor of Sanmina-SCI Corporation.
10.19(6)	Amendment to the Loan and Security Agreement, dated as of November 21, 2002, by and between the Company and Silicon Valley Bank.
10.20	Securities Purchase Agreement entered into in connection with the Company's January 2004 Financing Transaction.
10.21	Registration Rights Agreement entered into in connection with the Company's January 2004 Financing Transaction.
10.22	Form of Common Stock Purchase Warrant issued in connection with the Company's January 2004 Financing Transaction.
21	Subsidiaries of Novatel Wireless, Inc.
23.1	Consent of KPMG LLP, Independent Auditors.
23.2	Notice regarding consent of Arthur Andersen LLP.
24	Power of Attorney (See signature page).
31.1	Certification of our Chief Executive Officer adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

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<u>Exhibit Number</u>	<u>Description</u>
31.2	Certification of our Chief Financial Officer adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer and Chief Accounting Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
(1)	Incorporated by reference to the Company's annual report on Form 10-K for the year ended December 31, 2000.
(2)	Incorporated by reference to the Company's Registration Statement on Form S-1 (No. 333-42570), filed November 14, 2000, as amended.
(3)	Incorporated by reference to the Company's Registration Statement on Form S-8 (No. 333-53692), filed January 12, 2001.
(4)	Incorporated by reference to the Company's current report on Form 8-K, filed January 18, 2002.
(5)	Incorporated by reference to the Company's Registration Statement on Form S-3 (No. 333-81190), filed January 22, 2002, as amended.
(6)	Incorporated by reference to the Company's annual report on Form 10-K for the year ended December 31, 2001.
(7)	Incorporated by reference to the Company's current report on Form 8-K, filed March 28, 2003.
*	Management contract or compensation plan or arrangement.
	<b>(b)</b> Reports on Form 8-K
	Current report on Form 8-K, furnished pursuant to Items 7 and 9 on October 27, 2003, announcing financial results for the third quarter of 2003 and included in the press release related thereto.

**SECURITIES PURCHASE AGREEMENT**

This Securities Purchase Agreement (this "Agreement") is dated as of January 13, 2004, among Novatel Wireless, Inc., a Delaware corporation (the "Company"), and the purchasers identified on the signature pages hereto (each a "Purchaser" and collectively the "Purchasers"); and

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(2) of the Securities Act (as defined below), and Rule 506 promulgated thereunder, the Company desires to issue and sell to the Purchasers, and each Purchaser, severally and not jointly, desires to purchase from the Company in the aggregate, \$8,000,000 of Common Stock and Warrants on the Closing Date.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agrees as follows:

ARTICLE I.  
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings indicated in this Section 1.1:

"Action" shall have the meaning ascribed to such term in Section 3.1(j).

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 144. With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser.

"Bloomberg" shall mean Bloomberg Financial Markets (or any successor thereto).

"Business Day" means any day except Saturday, Sunday and any day which shall be a federal legal holiday or a day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Closing" means the closing of the purchase and sale of the Common Stock and the Warrants pursuant to Section 2.1.

"Closing Date" means the Trading Day when all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers' obligations to pay the Subscription Amount and (ii) the Company's obligations to deliver the Securities have been satisfied or waived.

"Commission" means the Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, \$0.001 par value per share, and any securities into which such common stock may hereafter be reclassified.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company Counsel” means Latham & Watkins LLP, counsel to the Company.

“Disclosure Schedules” means the Disclosure Schedules delivered concurrently herewith.

“Effective Date” means the date that the Registration Statement is first declared effective by the Commission.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“FW” means Feldman Weinstein LLP with offices located at 420 Lexington Avenue, New York, New York 10170-0002.

“Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(o).

“Liens” means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Material Adverse Effect” shall have the meaning ascribed to such term in Section 3.1(b).

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(m).

“Per Share Purchase Price” equals **\$7.00**, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Registration Statement” means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale by the Purchasers of the Shares and the Warrant Shares.

“Registration Rights Agreement” means the Registration Rights Agreement, dated as of the date of this Agreement, among the Company and each Purchaser, in the form of Exhibit A hereto.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“SEC Reports” shall have the meaning ascribed to such term in Section 3.1(h).

“Securities” means the Shares, the Warrants and the Warrant Shares.

“Securities Act” means the Securities Act of 1933, as amended.

“Shares” means the shares of Common Stock issued or issuable to each Purchaser pursuant to this Agreement.

“Subscription Amount” means, as to each Purchaser, the amounts set forth below such Purchaser’s signature block on the signature page hereto, in United States dollars and in immediately available funds.

“Subsidiary” shall mean the subsidiaries of the Company, if any, set forth on Schedule 3.1(a) of the Disclosure Schedules.

“Trading Day” means (i) a day on which the Common Stock is traded on a Trading Market, or (ii) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded on the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not quoted on the OTC Bulletin Board, a day on which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

“Trading Market” means the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the American Stock Exchange, the New York Stock Exchange, the Nasdaq National Market or the Nasdaq SmallCap Market.

“Transaction Documents” means this Agreement, the Warrants and the Registration Rights Agreement and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or, if the Trading Market is not open on such date, the nearest preceding date that the Trading Market is open for business) beginning at 9:30 a.m. (New York time) (or such other time as such Trading Market publicly announces is the official open of trading), and ending at 4:00 p.m. (New York time) (or such other time as such Trading Market publicly announces is the official close of trading) as reported by Bloomberg through its “Volume at Price” functions (subject to adjustment to reflect stock dividends, stock splits, stock combinations or other similar transactions after the date of this Agreement); (b) if the Common Stock is not then listed or quoted on a Trading Market and if prices for the Common Stock are then quoted on the OTC Bulletin Board, the volume weighted average price of the Common Stock for such date (or, if the OTC Bulletin Board is not open on such date, the nearest preceding date that the OTC Bulletin Board is open for business) on the OTC Bulletin Board beginning at 9:30 a.m. (New York time) (or such other time as such exchange publicly announces is the official open of trading), and ending at 4:00 p.m. (New York time) (or such other time as such exchange publicly announces is the official close of trading) as reported by Bloomberg (subject to adjustment to reflect stock dividends, stock splits, stock combinations or other similar transactions after the date of this Agreement); (c) if the Common Stock is not then listed or quoted on the OTC Bulletin Board and if prices for the Common Stock are then reported in the “Pink Sheets” published by the National Quotation Bureau Incorporated (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported; or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers and reasonably acceptable to the Company.

“Warrants” means the Common Stock Purchase Warrants, in the form of Exhibit B, issuable to the Purchasers at the Closing, which warrants shall be exercisable immediately upon issuance for a term of five years and have an exercise price equal to \$8.833.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE II.  
PURCHASE AND SALE

2.1 Closing. On the Closing Date, each Purchaser shall purchase from the Company, severally and not jointly with the other Purchasers, and the Company shall issue and sell to each Purchaser, (a) a number of Shares equal to such Purchaser's Subscription Amount divided by the Per Share Purchase Price and (b) the Warrants as determined pursuant to Section 2.2(a)(iii). The aggregate Subscription Amounts for Shares sold hereunder shall be \$8,000,000 (exclusive of any shares issuable upon exercise of the Warrants). Upon satisfaction of the conditions set forth in Section 2.2, the Closing shall occur at the offices of FW, or such other location as the parties shall mutually agree.

2.2 Deliveries.

- (a) On the Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:
  - (i) this Agreement duly executed by the Company;
  - (ii) a copy of the irrevocable instructions to the Company's transfer agent instructing the transfer agent to deliver, on an expedited basis, a certificate evidencing a number of Shares equal to such Purchaser's Subscription Amount divided by the Per Share Purchase Price, registered in the name of such Purchaser;
  - (iii) a Warrant, registered in the name of such Purchaser, pursuant to which such Purchaser shall have the right to acquire up to the number of shares of Common Stock equal to 20% of the Shares to be issued to such Purchaser at the Closing;
  - (iv) the Registration Rights Agreement duly executed by the Company;
  - (v) a legal opinion of Company Counsel, in the form of Exhibit C attached hereto; and
  - (vi) the Disclosure Schedules pursuant to Section 3.1.
- (b) On the Closing Date, each Purchaser shall deliver or cause to be delivered to the Company the following:
  - (i) this Agreement duly executed by such Purchaser;
  - (ii) such Purchaser's Subscription Amount by wire transfer per the written instructions of the Company;
  - (iii) the Registration Rights Agreement duly executed by such Purchaser;
  - (iv) a duly completed and executed Stock Certificate Questionnaire in the form of Exhibit D hereto; and
  - (v) a duly completed and executed Purchaser Questionnaire in the form of Exhibit E hereto.

2.3 Closing Conditions.

- (a) The obligations of the Company hereunder in connection with the Closing are subject to the following:
  - (i) the accuracy in all material respects when made and on the Closing Date of the representations and warranties of the Purchasers contained herein;
  - (ii) all obligations, covenants and agreements of the Purchasers required to be performed at or prior to the Closing Date shall have been performed; and
  - (iii) the delivery by the Purchasers of the items set forth in Section 2.2(b) of this Agreement.

- (b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following:
- (i) the accuracy in all material respects on the Closing Date of the representations and warranties of the Company contained herein;
  - (ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed; and
  - (iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;
  - (iv) from the date hereof to the Closing Date, no event shall have occurred that, as of the Closing Date, will have had a Material Adverse Effect with respect to the Company; and
  - (v) from the date hereof to the Closing Date, trading in the Common Stock shall not have been suspended by the Commission (except for any suspension of trading of limited duration agreed to by the Company, which suspension shall be terminated prior to the Closing) for more than 5 consecutive Trading Days, and, at any time prior to the Closing Date, trading in securities generally as reported by Bloomberg shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities for more than 5 consecutive Trading Days.

ARTICLE III.  
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth under the corresponding section of the Disclosure Schedules delivered concurrently herewith, the Company hereby makes the following representations and warranties as of the date hereof and as of the Closing Date to each Purchaser:

(a) Subsidiaries. All of the subsidiaries of the Company are set forth on Schedule 3.1(a) of the Disclosure Schedules. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive or similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. Each of the Company and the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation or default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not reasonably be expected to (i) adversely impair the legality, validity or enforceability of any Transaction Document, (ii) result in a material adverse effect on the results of operations, assets, business or financial condition of the Company and the Subsidiaries, taken as a whole, or (iii) result in a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification; provided, however, Material Adverse Effect shall not include or be the result of (x) changes in the market price of the Common Stock, or (y) changes in general economic conditions or changes affecting the industry generally in which the Company operates.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its obligations thereunder. The execution and delivery of each of the Transaction Documents by the Company and the consummation by it of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company in connection therewith other than the Required Approvals. Each Transaction Document has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies, (iii) insofar as indemnification and contribution provisions may be limited by applicable law and (iv) with respect to the Registration Rights Agreement only, except as may be limited by the terms of the Amended and Restated Investors' Rights Agreement dated June 30, 2000 between the Company and the persons identified on Exhibit A thereto.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company, the issuance and sale of the Shares and the consummation by the Company of the other transactions contemplated thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected, or (iv) conflict with or violate the terms of any agreement by which the Company or any Subsidiary is bound or to which any property or asset of the Company or any Subsidiary is bound or affected; except in the case of each of clauses (ii), (iii) and (iv), such as could not reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than (i) filings required pursuant to Section 4.4 of this Agreement, (ii) the filing with the Commission of the Registration Statement, (iii) application(s) to each applicable Trading Market for the listing of the Shares and Warrant Shares for trading thereon in the time and manner required thereby, (iv) post-Closing filings with The Nasdaq Stock Market in connection with the listing of the Shares and Warrant Shares and (v) the filing of Form D with the Commission and such filings as are required to be made under the Securities Act, the Exchange Act and applicable state securities laws (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens. The issuance of the Shares is not subject to any preemptive or similar rights to subscribe for or purchase securities. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to this Agreement and the Warrants.

(g) Capitalization. The capitalization of the Company is as described in the Company's most recent SEC Report filed with the Commission. The Company has not issued any capital stock since such filing other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plan and pursuant to the conversion or exercise of outstanding Common Stock Equivalents outstanding as of the date of such SEC Reports. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, script rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock, or securities or rights convertible or exchangeable into shares of Common Stock. The issue and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under such securities. All of the outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors of the Company or others is required for the issuance and sale of the Shares. Except as disclosed in the SEC Reports, there are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. The Company has filed all reports required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law to file such material) (the foregoing materials, including the exhibits thereto, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the Commission promulgated thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods presented ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes. Since the date of the latest audited financial statements included within the SEC Reports, except as disclosed in the SEC Reports, (i) there has been no event, occurrence or development that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or required to be disclosed in filings

made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans or pursuant to the conversion or exercise of Common Stock Equivalents outstanding on the date of the latest audited financial statements included within the SEC Reports. The Company does not have pending before the Commission any request for confidential treatment of information.

(j) Litigation. Except as disclosed in the SEC Reports, there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an “Action”) which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, reasonably be expected to result in a Material Adverse Effect. Except as disclosed in the SEC Reports, neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company which could reasonably be expected to result in a Material Adverse Effect.

(l) Compliance. Except as disclosed in the SEC Reports, neither the Company nor any Subsidiary (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body, or (iii) is or has been in violation of any statute, rule or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws applicable to its business except in each case as could not reasonably be expected to result in a Material Adverse Effect.

(m) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (“Material Permits”), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(n) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them that is material to the business of the Company and the Subsidiaries and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and Liens for the payment of federal, state or other

taxes, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases of which the Company and the Subsidiaries are in compliance.

(o) Patents and Trademarks. To the knowledge of the Company and each Subsidiary, the Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, licenses and other similar rights that are necessary or material for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could not reasonably be expected to result in a Material Adverse Effect (collectively, the "Intellectual Property Rights"). Neither the Company nor any Subsidiary has received a written notice that the Intellectual Property Rights used by the Company or any Subsidiary violates or infringes upon the rights of any Person.

(p) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(q) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner, in each case in excess of \$60,000 other than (i) for payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) for other employee benefits, including stock option agreements under any stock option plan of the Company.

(r) Internal Accounting Controls. The Company and each of the Subsidiaries, on a consolidated basis, maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company, including the Subsidiaries, is made known to the certifying officers by others within those entities, particularly during the period in which the Company's most recently filed period report under the Exchange Act, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed period report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Exchange Act) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal controls.

(s) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by this Agreement.

(t) Private Placement. Assuming the accuracy of the Purchasers representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the applicable Trading Market.

(u) Investment Company. The Company is not, and is not an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(v) Registration Rights. No Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company which securities are not already subject to a currently effective registration statement filed pursuant to the Securities Act.

(w) Listing and Maintenance Requirements. The Company's Common Stock is registered pursuant to Section 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, in the 12 months preceding the date hereof, received notice from any applicable Trading Market to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with the listing and maintenance requirements of the applicable Trading Market.

(x) Application of Takeover Protections. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's Certificate of Incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(y) Disclosure. Other than the terms of the transaction contemplated by this Agreement, the Company confirms that, neither the Company nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchasers will rely on the foregoing representations and covenants in effecting transactions in securities of the Company. All disclosure provided to the Purchasers regarding the Company, its business and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, furnished by or on behalf of the Company are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(z) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act or any applicable shareholder approval

provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated.

(aa) Solvency. Based on the financial condition of the Company as of the Closing Date after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder, (i) the Company's fair saleable value of its assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature; and (ii) the Company's assets do not constitute unreasonably small capital to carry on its business for the current fiscal year as now conducted and as proposed to be conducted, including its capital needs taking into account the particular capital requirements of the business conducted by the Company, and its projected capital requirements and capital availability. The Company does not presently intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt).

(bb) Form S-3 Eligibility. The Company is eligible to register the resale of its Common Stock by the Purchasers under Form S-3 promulgated under the Securities Act and the Company hereby covenants and agrees to use its best efforts to maintain its eligibility to use Form S-3 until the Registration Statement covering the resale of the Shares shall have been filed with, and declared effective by, the Commission.

(cc) Taxes. Except for matters that could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Company and each Subsidiary has filed all necessary federal, state and foreign income and franchise tax returns and has paid or accrued all taxes shown as due thereon, and the Company has no knowledge of a tax deficiency which has been asserted or threatened against the Company or any Subsidiary.

(dd) General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Shares by any form of general solicitation or general advertising. Assuming the accuracy of the representation and warranties of each Purchaser in Section 3.2, the Company has offered the Shares for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(ee) Foreign Corrupt Practices. Neither the Company, nor to the knowledge of the Company, any agent or other person acting on behalf of the Company, has (i) directly or indirectly, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

(ff) Accountants. To the Company's knowledge, KPMG LLP, the Company's accountants, who the Company expects will express their opinion with respect to the financial statements to be included in the Company's Annual Report on Form 10-K for the year ended December 31, 2003, are independent accountants as required by the Securities Act and the rules and regulations promulgated thereunder.

(gg) Acknowledgment Regarding Purchasers' Purchase of Shares. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with this Agreement and the transactions contemplated hereby is merely incidental to the Purchasers' purchase of the Shares.

The Purchasers acknowledge and agree that the Company does not make or has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Section 3.1.

3.2 Representations and Warranties of the Purchasers. Each Purchaser hereby, for itself and for no other Purchaser, represents and warrants as of the date hereof and as of the Closing Date to the Company as follows:

(a) Organization; Authority. Such Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with full right, corporate or partnership power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations thereunder. The execution, delivery and performance by such Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate or similar action on the part of such Purchaser. Each Transaction Document to which it is party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Investment Intent. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and such Purchaser is acquiring the Securities as principal for its own account for investment purposes only and not with a view to or for distributing or reselling such Securities or any part thereof, has no present intention of distributing any of such Securities and has no arrangement or understanding with any other persons regarding the distribution of such Securities (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business. Such Purchaser does not have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws).

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and at the date hereof it is, and on the date of purchase will be, an "accredited investor" as defined in Rule 501(a) under the Securities Act. Such Purchaser is not required to be registered as a broker-dealer under Section 15 of the Exchange Act. Such Purchaser has answered all questions in the Purchaser Questionnaire attached hereto as Exhibit E for use in preparation of the Registration Statement and the answers thereto are true and correct as of the date hereof and will be true and correct as of the Closing Dates and such Purchaser will notify the Company immediately of any change in any of such information until such time as such Purchaser has sold all of its Shares, Warrant Shares or until the Company is no longer required to keep the Registration Statement effective. Such Purchaser understands that the issuance of the Securities to such Purchaser has not been registered under the Securities Act, or registered or qualified under any state securities law in reliance on specific exemptions therefrom, which exemptions may depend upon, among other things, the bona fide nature of such Purchaser's investment intent as expressed herein.

(d) Experience of Such Purchaser. Such Purchaser has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. Such Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) Access to Information. Such Purchaser acknowledges that it has reviewed the SEC Reports and Disclosure Schedules and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and the Subsidiaries and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser's right to rely on the SEC Reports, as of their respective dates, and the Company's representations and warranties contained in the Transaction Documents and the related Disclosure Schedules.

(g) International Actions. Such Purchaser acknowledges, represents and agrees that no action has been or will be taken in any jurisdiction outside the United States by the Company or any other agent on behalf of such Purchaser that would permit an offering of the Securities, or possession or distribution of offering materials in connection with the issue of the Securities, in any jurisdiction outside the United States. If such Purchaser is located outside the United States, it has or will take all actions necessary for the sale of the Securities to comply with all applicable laws and regulations in each foreign jurisdiction in which it purchases, offers, sells or delivers Securities or has in its possession or distributes any offering material, in all cases at its own expense.

(h) No Tax or Legal Advice. Such Purchaser understands that nothing in this Agreement, any other Transaction Document or any other materials presented to such Purchaser in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. Such Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of Securities.

(i) Brokers or Finders. The Company has not and will not incur, directly or indirectly, as a result of any action taken solely by any Purchaser, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or the transactions contemplated hereby, except for a one-time placement fee to be paid by the Company in the aggregate amount of \$400,000.

(j) Representation Regarding Purchasers' Purchase of Shares. Such Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby. Such Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and any advice given by such Purchaser or any of its respective representatives or agents in connection with this Agreement and the transactions contemplated hereby is merely incidental to such Purchaser's purchase of the Shares.

The Company acknowledges and agrees that each Purchaser does not make or has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in this Section 3.2.

ARTICLE IV.  
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) Each Purchaser agrees that the Securities may only be disposed of in compliance with state and federal securities laws including compliance with Regulation M under the Exchange Act. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company, to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of Article IV of this Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1(b), of a legend on any of the Securities substantially in the following form:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and the Registration rights Agreement and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities are subject to registration pursuant to the Registration Rights Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder.

(c) Certificates evidencing the Shares and Warrant Shares shall not contain any legend (including the legend set forth in Section 4.1(b)), (i) while a registration statement (including the Registration Statement) covering the resale of such security is effective under the Securities Act, or (ii) following any sale of such Shares or Warrant Shares pursuant to Rule 144, or (iii) if such Shares or Warrant Shares are eligible for sale under Rule 144(k), or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the Staff of the Commission). The

Company shall cause its counsel to issue a legal opinion to the Company's transfer agent promptly after the Effective Date if required by the Company's transfer agent to effect the removal of the legend hereunder. If all or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the resale of the Warrant Shares, such Warrant Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, no later than three Trading Days following the delivery by a Purchaser to the Company or the Company's transfer agent of a certificate representing Shares or Warrant Shares, as the case may be, issued with a restrictive legend (such date, the "Legend Removal Date"), cause to be delivered to such Purchaser a certificate representing such Securities that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to any transfer agent of the Company that enlarge the restrictions on transfer set forth in this Section.

(d) In addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Shares or Warrant Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Company's transfer agent) subject to Section 4.1(c), \$5 per Trading Day (increasing to \$10 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after such third Trading Day after the Legend Removal Date until such certificate is delivered. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Company's failure to deliver certificates representing any Securities as required by the Transaction Documents, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance that the Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom.

4.2 Furnishing of Information. As long as any Purchaser owns Securities, the Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. As long as any Purchaser owns Securities, if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchasers and make publicly available in accordance with Rule 144(c)(2) such information as is required for the Purchasers to sell the Securities under Rule 144. The Company further covenants that it will take such further action as any holder of Securities may reasonably request, all to the extent required from time to time to enable such Person to sell such Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144.

4.3 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities to the Purchasers or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any applicable Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.4 Securities Laws Disclosure; Publicity. The Company shall, by 8:30 a.m. Eastern time on the Trading Day following the Closing Date, issue a press release or file a Current Report on Form 8-K, in each case reasonably acceptable to each Purchaser's representative disclosing the transactions contemplated hereby. The Company and such persons representative shall consult with each other in issuing any press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release or otherwise make any such public statement without the prior consent of the Company, with respect to

any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except (i) as required by federal securities law in connection with the registration statement contemplated by the Registration Rights Agreement and (ii) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure.

4.5 Non-Public Information. The Company covenants and agrees that neither it nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information, unless prior thereto such Purchaser shall have executed a written agreement regarding the confidentiality and use of such information. The Company understands and confirms that each Purchaser shall be relying on the foregoing representations in effecting transactions in securities of the Company.

4.6 Use of Proceeds. Except as set forth on Schedule 4.6 of the Disclosure Schedules, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and not for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and prior practices), to redeem any Company equity or equity-equivalent securities or, to the Company's knowledge, to settle any outstanding litigation.

4.7 Indemnification of Purchasers. The Company will indemnify and hold the Purchasers and their directors, officers, shareholders, partners, employees and agents (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to: (a) any misrepresentation, breach or inaccuracy, or any allegation by a third party that, if true, would constitute a breach or inaccuracy, of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents; or (b) any cause of action, suit or claim brought or made against such Purchaser Party and arising solely out of or solely resulting from the execution, delivery, performance or enforcement of this Agreement or any of the other Transaction Documents, other than directly resulting from the gross negligence or willful misconduct of the Purchasers or any of them. The Company will reimburse such Purchaser for its reasonable legal and other expenses (including the cost of any investigation, preparation and travel in connection therewith) incurred in connection therewith, as such expenses are incurred.

4.8 Reservation of Common Stock. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Shares pursuant to this Agreement and Warrant Shares pursuant to any exercise of the Warrants.

4.9 Listing of Common Stock. The Company hereby agrees to use commercially reasonable efforts to maintain the listing of the Common Stock on a Trading Market, and as soon as reasonably practicable following the Closing (but not later than the earlier of the Effective Date and the first anniversary of the Closing Date) to list all of the Shares and Warrant Shares on such Trading Market. The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will include in such application all of the Shares and Warrant Shares, and will take such other action as is necessary to cause all of the Shares and Warrant Shares to be listed on such other Trading Market as promptly as possible. The Company shall use commercially reasonable efforts to continue the listing and trading of its Common Stock on a Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market.

4.10 Equal Treatment of Purchasers. No consideration shall be offered or paid to any person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration is also offered to all of the parties to the Transaction Documents. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended to treat for the Company the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

4.11 Subsequent Equity Sales. From the date hereof until 30 days after the Effective Date, neither the Company nor any Subsidiary shall issue shares of Common Stock or Common Stock Equivalents; provided, however, the 30 day period set forth in this Section 4.11 shall be extended for the number of Trading Days during such period in which (y) trading in the Common Stock is suspended by any Trading Market, or (z) following the Effective Date, the Registration Statement is not effective or the prospectus included in the Registration Statement may not be used by the Purchasers for the resale of the Shares and Warrant Shares. Notwithstanding anything to the contrary herein, this Section 4.11 shall not apply to the following (a) the granting of options to employees, officers and directors of the Company pursuant to any stock option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Company or a majority of the members of a committee of non-employee directors established for such purpose, or (b) the exercise of any security issued by the Company in connection with the offer and sale of the Company's securities pursuant to this Agreement, or (c) the exercise of or conversion of any convertible securities, options or warrants issued and outstanding on the date hereof, provided such securities have not been amended since the date hereof, or (d) acquisitions or strategic investments, the primary purpose of which is not to raise capital.

4.12 Deliver of Securities After Closing. The Company shall deliver, or cause to be delivered, the respective Shares and Warrants purchased by each Purchaser to such Purchaser within 3 Trading Days following the Closing Date.

#### ARTICLE V. MISCELLANEOUS

5.1 Fees and Expenses. At the Closing, the Company has agreed to reimburse Omicron Master Trust ("Omicron") up to \$25,000 for its legal fees and expenses, \$10,000 of which has already been paid. Accordingly, in lieu of the foregoing payments, the Company, on the Closing Date, will direct that the aggregate amount that Omicron is to pay for the Shares and the Warrants at the Closing, be reduced by \$15,000. Except as otherwise set forth in this Agreement, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all stamp and other taxes and duties levied in connection with the sale of the Securities. At the Closing, the Company shall pay the fees and expenses of Company Counsel.

5.2 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto prior to 6:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 6:30 p.m.

(New York City time) on any Trading Day, (c) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

5.3 Amendments; Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed, in the case of an amendment, by the Company and each Purchaser or, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

5.4 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

5.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser. Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions hereof that apply to the "Purchasers".

5.6 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.7.

5.7 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by delivering a copy thereof via overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto (including its affiliates, agents, officers, directors and employees) hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of a Transaction Document, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

5.8 Survival. The representations and warranties herein shall survive the Closing and delivery of the Shares and Warrant Shares.

5.9 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

5.10 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

5.11 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities.

5.12 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agrees to waive in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.13 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.14 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any Transaction Document, and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Document. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in their review and negotiation of the Transaction Documents. For reasons of administrative convenience only, Purchasers and their respective counsel

have chosen to communicate with the Company through FW. FW does not represent all of the Purchasers but only Omicron Master Trust. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by the Purchasers.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**NOVATEL WIRELESS, INC.**

Address for Notice:

By: /s/ PETER V. LEPARULO

Name: Peter V. Leparulo

Title: Chief Executive Officer

Attn:

Tel:

Fax:

With copy to (which shall not constitute notice):

Latham & Watkins LLP  
633 West Fifth Street, Suite 4000  
Los Angeles, CA 90071  
Attn: J. Scott Hodgkins, Esq.  
Tel: (213) 485-1234  
Fax: (213) 891-8763

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGES FOR PURCHASERS FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**OMICRON MASTER TRUST**

By: Omicron Capital L.P., as advisor  
By: Omicron Capital Inc., its general partner

Address for Notice and Delivery:

c/o Omicron Capital L.P.  
810 Seventh Avenue, 39<sup>th</sup> Fl.  
New York, NY 10019  
Fax: (212) 803-5269 3emspace  
Attn: Brian Daly

By: /s/ BRUCE BERNSTEIN

Name: Bruce Bernstein  
Title: CFO

Subscription Amount: \$

Shares:

Warrant Shares:

With a copy to:

(which shall not constitute notice)

Feldman Weinstein LLP  
420 Lexington Avenue  
New York, New York 10170  
Attn: Robert F. Charron  
Tel: (212) 869-7000  
Fax: (212) 401-4741

[NVTL SPA SIGNATURE PAGE CONTINUED]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Investing Entity: \_\_\_\_\_

*Signature of Authorized Signatory of Investing entity:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Address for Notice of Investing Entity:

Address for Delivery of Securities for Investing Entity (if not same as above):

Subscription Amount:

Shares:

Warrant Shares:

**[PROVIDE EIN NUMBER, IF APPLICABLE, UNDER SEPARATE COVER]**

[NVTL SPA SIGNATURE PAGE CONTINUED]

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**EXHIBIT A**

**FORM OF REGISTRATION RIGHTS AGREEMENT**

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**EXHIBIT B**

**FORM OF COMMON STOCK PURCHASE WARRANTS**

B-1

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**EXHIBIT C**

**FORM OF COMPANY COUNSEL OPINION**

C-1

**EXHIBIT D**

**NOVATEL WIRELESS, INC.**

**STOCK CERTIFICATE QUESTIONNAIRE**

Please provide us with the following information:

1. The exact name that your Shares are to be registered in (this is the name that will appear on your stock certificate(s)). You may use a nominee name if appropriate:
2. The relationship between the Purchaser and the registered holder listed in response to item 1 above:
3. The mailing address of the registered holder listed in response to item 1 above:
4. The Social Security Number or Tax Identification Number of the registered holder listed in the response to item 1 above:

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**EXHIBIT E**

**NOVATEL WIRELESS, INC.**

**PURCHASER QUESTIONNAIRE**

**(all information will be treated confidentially)**

To: Novatel Wireless, Inc.,

This Purchaser Questionnaire (“Questionnaire”) must be completed by each potential purchaser in connection with the offer and sale of the shares of the common stock, par value \$.001 per share and warrants to purchase common stock, par value \$.001 per share (collectively, the “Securities”), of Novatel Wireless, Inc. (the “Company”). The Securities are being offered and sold by the Company without registration under the Securities Act of 1933, as amended (the “Securities Act”), and the securities laws of certain states, in reliance on the exemptions contained in Section 4 of the Securities Act and on Regulation D promulgated thereunder and in reliance on similar exemptions under applicable state laws. The Company must determine that a potential purchaser meets certain suitability requirements before offering or selling Securities to such investor. The purpose of this Questionnaire is to assure the Company that each purchaser will meet the applicable suitability requirements. The information supplied by you will be used in determining whether you meet such criteria, and reliance upon the private offering exemption from registration is based in part on the information herein supplied.

This Questionnaire does not constitute an offer to sell or a solicitation of an offer to buy any security. Your answers will be kept strictly confidential. However, by signing this Questionnaire you will be authorizing the Company to provide a completed copy of this Questionnaire to such parties as the Company deems appropriate in order to ensure that the offer and sale of the Shares will not result in a violation of the Securities Act or the securities laws of any state and that you otherwise satisfy the suitability standards applicable to purchasers of the Securities. All potential purchasers must answer all applicable questions and complete, date and sign this Questionnaire. Please print or type your responses and attach additional sheets of paper if necessary to complete your answers to any item.

Capitalized terms used without definition shall have the meanings ascribed to such terms in the Securities Purchase Agreement, dated as of November \_\_, 2003 (the “Agreement”), between the Company and the purchasers listed on the signature pages thereto.

**A. BACKGROUND INFORMATION**

Name: \_\_\_\_\_

Business Address: \_\_\_\_\_  
(Number and Street)

\_\_\_\_\_  
(City) (State) (Zip Code)

Telephone Number: ( ) \_\_\_\_\_

Residence Address: \_\_\_\_\_  
(Number and Street)

\_\_\_\_\_  
(City) (State) (Zip Code)

Telephone Number: (        ) \_\_\_\_\_

If an individual:

Age: \_\_\_\_\_                      Citizenship: \_\_\_\_\_                      Where registered to vote: \_\_\_\_\_

If a corporation, partnership, limited liability company, trust or other entity:

Type of entity: \_\_\_\_\_

State of formation: \_\_\_\_\_                      Date of formation: \_\_\_\_\_

Social Security or Taxpayer Identification No.: \_\_\_\_\_

Send all correspondence to (check one):                       Residence Address                       Business Address

**B. STATUS AS ACCREDITED INVESTOR**

The undersigned is an “accredited investor” as such term is defined in Regulation D under the Securities Act, as at the time of the sale of the Securities the undersigned falls within one or more of the following categories (Please initial one or more, as applicable):

\_\_\_\_\_(1) a bank as defined in Section 3(a)(2) of the Securities Act, or a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity; a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; an insurance company as defined in Section 2(13) of the Securities Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that act; a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with the investment decisions made solely by persons that are accredited investors;

\_\_\_\_\_(2) a private business development company as defined in Section 202(a)(22) of the Investment Adviser Act of 1940;

\_\_\_\_\_(3) an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the Shares offered, with total assets in excess of \$5,000,000;

\_\_\_\_\_(4) a natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of such person’s purchase of the Shares exceeds \$1,000,000;<sup>1</sup>

\_\_\_\_\_(5) a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

\_\_\_\_\_(6) a trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Shares offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of Regulation D; and

\_\_\_\_\_(7) an entity in which all of the equity owners are accredited investors (as defined above).

**C. REPRESENTATIONS**

The undersigned hereby represents and warrants to the Company as follows:

1. The information contained herein is complete and accurate and may be relied upon by the Company, and the undersigned will notify the Company immediately of any material change in any of such information occurring prior to the closing, if any, with respect to the purchase of Securities by the undersigned or any co-purchaser.

2. There are no suits, pending litigation, or claims against the undersigned that could materially affect the net worth of the undersigned as reported in this Questionnaire.

IN WITNESS WHEREOF, the undersigned has executed this Questionnaire this \_\_\_\_ day of November 2003, and declares under oath that it is truthful and correct.

Print Name

By: \_\_\_\_\_

Signature

Title: \_\_\_\_\_

(required for any purchaser that is a corporation, partnership, trust or other entity)

<sup>1</sup> As used in this Questionnaire, the term "net worth" means the excess of total assets over total liabilities. In computing net worth for the purpose of subsection (4), the principal residence of the investor must be valued at cost, including cost of improvements, or at recently appraised value by an institutional lender making a secured loan, net of encumbrances. In determining income, the investor should add to the investor's adjusted gross income any amounts attributable to tax exempt income received, losses claimed as a limited partner in any limited partnership, deductions claimed for depreciation, contributions to an IRA or KEOGH retirement plan, alimony payments, and any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income.

## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of January 13, 2004, by and among Novatel Wireless, Inc., a Delaware corporation (the "Company"), and the purchasers signatory hereto (each such purchaser, a "Purchaser" and collectively, the "Purchasers").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof among the Company and the Purchasers (the "Purchase Agreement").

The Company and the Purchasers hereby agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(d).

"Effectiveness Date" means, with respect to the Registration Statement required to be filed hereunder, the earlier of (a) the 90<sup>th</sup> calendar day following the date of the Purchase Agreement (120<sup>th</sup> calendar day in the event of a "full review" by the Commission), and (b) the fifth Trading Day following the date on which the Company is notified by the Commission that the Registration Statement will not be reviewed or is no longer subject to further review and comments.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(b).

"Event Date" shall have the meaning set forth in Section 2(b).

"Filing Date" means, with respect to the Registration Statement required to be filed hereunder, the earlier of (i) the date the Company files the next registration statement with the Commission and (ii) the 30<sup>th</sup> calendar day following the date of the Purchase Agreement.

"Holder" or "Holders" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"Indemnified Party" shall have the meaning set forth in Section 5(c).

"Indemnifying Party" shall have the meaning set forth in Section 5(c).

"Losses" shall have the meaning set forth in Section 5(a).

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Prospectus" means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means all of the Shares and the Warrant Shares, together with any shares of Common Stock issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing. Notwithstanding the foregoing, the Shares shall not be treated as Registrable Securities if they have been (x) sold to or through a broker or dealer or underwritten in a public distribution or a public securities transaction, or (y) sold in a transaction exempt from the registration and

prospectus delivery requirements of the Securities Act under Section 4(1) thereof so that all transfer restrictions, and restrictive legends with respect thereto, if any, are removed upon the consummation of such sale.

“Registration Statement” means the registration statement required to be filed hereunder, including (in each case) the Prospectus, amendments and supplements to the registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in the registration statement.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

## 2. Registration.

(a) On or prior to the Filing Date, the Company shall prepare and file with the Commission the Registration Statement covering the resale of all of the Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. The Registration Statement required hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case the Registration Statement shall be on another appropriate form in accordance herewith). The Registration Statement required hereunder shall contain (except if otherwise directed by the Holders) a “Plan of Distribution”, substantially in the form attached hereto as Annex A. Subject to the terms of this Agreement, the Company shall use its commercially reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event not later than the Effectiveness Date, and shall use its reasonable best efforts to keep the Registration Statement continuously effective under the Securities Act until the date when all Registrable Securities covered by the Registration Statement have been sold or may be sold without volume restrictions pursuant to Rule 144(k) as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the affected Holders (the “Effectiveness Period”).

(b) If: (i) the Registration Statement is not filed on or prior to the Filing Date (if the Company files the Registration Statement without affording the Holder the opportunity to review and comment on the same as required by Section 3(a), the Company shall not be deemed to have satisfied this clause (i)), or (ii) prior to the date when such Registration Statement is first declared effective by the Commission, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within 15 Trading Days after the receipt of comments by or notice from the Commission that such amendment is required in order for the Registration Statement to be declared effective, or (iii) the Registration Statement filed or required to be filed hereunder is not declared effective by the Commission on or before the Effectiveness Date, or (iv) after the Registration Statement is first declared effective by the Commission, it ceases for any reason to remain continuously effective as to all Registrable Securities for which it is required to be effective, or the Holders are not permitted to utilize the Prospectus therein to resell such Registrable Securities, for in any such case 15 consecutive Trading Days but no more than an aggregate of 25 Trading Days during any 12-month period (which need not be consecutive Trading Days)(any such failure or breach being referred to as an “Event,” and for purposes of clause (i) or (iii) the date on which such Event occurs, or for purposes of clause (ii) the date which such 15 Trading Day period is exceeded, or for purposes of clause (iv) the date on which such 15 or 25 Trading Day period, as applicable, is exceeded being referred to as “Event Date”), then in addition to any other rights the Holders may have hereunder or under applicable law, (x) on each such Event Date the Company shall pay to each Holder an amount in cash, as liquidated damages and not as a penalty, equal to 1.5% of the aggregate purchase price paid by such Holder pursuant to the Purchase Agreement for any Registrable Securities then

held by such Holder; and (y) on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as liquidated damages and not as a penalty, equal to 1.5% of the aggregate purchase price paid by such Holder pursuant to the Purchase Agreement for any Registrable Securities then held by such Holder; provided, however, as to an Event pursuant to clause (iii) only, liquidated damages shall be 0.05% for purposes of the calculations made above; provided, further, as to an Event pursuant to clause (iv) in connection with a notice provided by Section 3(c)(v) for an underwritten public offering of the Common Stock only, liquidated damages as to the first 30 calendar days such Event accrues liquidated damages shall be 0.075% for purposes of the calculations made above. For purposes of the previous sentence, (a) in the case of clauses (i)-(ii), such Event shall be cured upon the occurrence of such filing, (b) in the case of clause (iii), such Event shall be cured upon the effectiveness of the Registration Statement, and (c) in the case of clause (iv), such Event shall be cured upon the Registration Statement and the Prospectus contained therein being available for use by the Holders immediately following such Event. If the Company fails to pay any liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 12% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The liquidated damages pursuant to the terms hereof shall apply on a daily pro-rata basis for any portion of a month prior to the cure of an Event.

### 3. Registration Procedures

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than three Trading Days prior to the filing of the Registration Statement or any related Prospectus or any amendment or supplement thereto, the Company shall, (i) furnish to the Holders copies of all such documents proposed to be filed (including documents incorporated or deemed incorporated by reference to the extent requested by such Person) which documents will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent certified public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file the Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that the Company is notified of such objection in writing no later than three (3) Trading Days after the Holders have been so furnished copies of such documents.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to the Registration Statement and the Prospectus used in connection therewith as may be necessary to keep the Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period; (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424; (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to the Registration Statement or any amendment thereto and, as promptly as reasonably possible, upon request, provide the Holders true and complete copies of all correspondence from and to the Commission relating to the Registration Statement (which shall, unless otherwise consented to in writing by the receiving Purchaser, have any material non-public information contained therein redacted); and (iv) comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by the Registration Statement during the applicable period in accordance with the intended methods of disposition by the Holders thereof set forth in the Registration Statement as so amended or in such Prospectus as so supplemented.

(c) Notify the Holders of Registrable Securities to be sold as promptly as reasonably possible (provided if the nature of such notice is material non-public information, without indicating the nature of such notice)

and (if requested by any such Person) confirm such notice in writing promptly following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to the Registration Statement is proposed to be filed; (B) when the Commission notifies the Company whether there will be a “review” of the Registration Statement and whenever the Commission comments in writing on the Registration Statement (the Company shall upon request provide true and complete copies thereof and all written responses thereto to each of the Holders (which shall, unless otherwise consented to in writing by the receiving Purchaser, have any material non-public information contained therein redacted)); and (C) with respect to the Registration Statement or any post-effective amendment, when the same has become effective; (ii) of any request by the Commission or any other Federal or state governmental authority during the period of effectiveness of the Registration Statement for amendments or supplements to the Registration Statement or Prospectus or for additional information; (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; (v) of the undertaking by the Company of an underwritten public offering of the Common Stock which will, at the request of the underwriters of such offering, require the Holders to suspend sales of Registrable Securities pursuant to the Registration Statement, which suspension may not occur less than 15 days from the date of such notice; and (vi) of the occurrence of any event or passage of time that makes the financial statements included in the Registration Statement ineligible for inclusion therein or any statement made in the Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to the Registration Statement, Prospectus or other documents so that, in the case of the Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) Use its reasonable best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of the Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(e) Furnish to each Holder, without charge, at least one conformed copy of the Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission.

(f) Promptly deliver to each Holder, without charge, as many copies of the Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Persons may reasonably request in connection with resales by the Holder of Registrable Securities. Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving on any notice pursuant to Section 3(c).

(g) Prior to any resale of Registrable Securities by a Holder, use its reasonable best efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, that the Company shall not be required to qualify generally to do business in any jurisdiction

where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(h) If requested by the Holders, cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may request.

(i) Upon the occurrence of any event contemplated by Section 3(c)(v), as promptly as reasonably possible, prepare a supplement or amendment, including a post-effective amendment, to the Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither the Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (ii) through (vi) of Section 3(c) above to suspend the use of the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus; provided that the Company shall not be permitted to suspend the use of the Prospectus in connection with a notice pursuant to Section 3(c)(v) unless and until the Registration Statement has been effective and available for use by the Holders for at least 30 days in the aggregate. The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(i) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of liquidated damages pursuant to Section 2(b), for a period not to exceed 60 days (which need not be consecutive days) in any 12-month period.

(j) Comply with all applicable rules and regulations of the Commission.

(k) The Company may require each Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the person thereof that has voting and dispositive control over the Registrable Securities. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing as to such Holder at such time shall be tolled and any Event that may otherwise occur because of such delay shall be suspended, until such information is delivered to the Company.

4. Registration Expenses. All fees and expenses (except for the fees and expenses of any counsel (other than pursuant to Sections 5(a) and as set forth in the Purchase Agreement) to the selling Holder which shall be borne by the Holders) incurred by the Company incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to the Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with the applicable Trading Market on which the Common Stock is then listed for trading, and (B) in compliance with applicable state securities or Blue Sky laws), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is reasonably requested by the holders of a majority of the Registrable Securities included in the Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and

employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder.

#### 5. Indemnification

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, agents and employees of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, agents and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that (i) such untrue statements or omissions or alleged untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, (ii) to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (iii) in the case of an occurrence of an event of the type specified in Section 3(c)(ii)-(v), the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 6(d). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement.

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: (x) such Holder's failure to comply with the prospectus delivery requirements of the Securities Act or (y) any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company specifically for inclusion in the Registration Statement or such Prospectus, (ii) to the extent that such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in Section 3(c)(ii)-(v), the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 6(d). In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of

the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an “Indemnified Party”), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the “Indemnifying Party”) in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding and the Indemnified Party shall have been materially prejudiced thereby; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party; provided, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is not entitled to indemnification hereunder, determined based upon the relative faults of the parties.

(d) Contribution. If a claim for indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in Section 5(c), any reasonable attorneys’ or other reasonable fees or expenses incurred by such party in connection with

any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 5(d), no Holder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission, except in the case of fraud by such Holder.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

#### 6. Miscellaneous

(a) Remedies. In the event of a breach by the Company or by a Holder, of any of their obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations. Except as set forth on Schedule 6(b) attached hereto, neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in a Registration Statement other than the Registrable Securities, and the Company shall not after the date hereof enter into any agreement providing any such right to any of its security holders. Except as set forth on Schedule 6(b), no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company not already subject to an effective registration statement. The Company shall not file any other registration statement until after the Effective Date.

(c) Compliance. Each Holder covenants and agrees that it will comply with (i) the prospectus delivery requirements of the Securities Act as applicable to it in connection with sales of Registrable Securities pursuant to the Registration Statement and (ii) Regulation M under the Exchange Act.

(d) Discontinued Disposition. Each Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(c), such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement after the date provided in such notice to discontinue the disposition until such Holder's receipt of the copies of the supplemented Prospectus and/or amended Registration Statement or until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement; provided that the Company shall not be permitted to suspend the use of the Prospectus in connection with a notice pursuant to Section 3(c)(v) unless and until the Registration Statement has been effective and available for use by the Holders for at least 30 days in the aggregate. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as it is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(b).

(e) Piggy-Back Registrations. If at any time during the Effectiveness Period there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to

prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the stock option or other employee benefit plans, then the Company shall send to each Holder who holds Registrable Securities that are not then covered by an effective Registration Statement a written notice of such determination and, if within fifteen days after the date of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered, subject to customary underwriter cutbacks applicable to all holders of registration rights. Failure to comply with this provision shall be deemed an "Event" pursuant to Section 2(b) and the Company shall be subject to liquidated damages thereunder from the date the Company fails to comply with this provision until the date such Registrable Securities are registered for resale by the Holder.

(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and each Holder of the then outstanding Registrable Securities.

(g) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be made in accordance with the provisions of the Purchase Agreement.

(h) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under the Purchase Agreement.

(i) Execution and Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature were the original thereof.

(j) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined with the provisions of the Purchase Agreement.

(k) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

(l) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(m) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(n) Independent Nature of Purchasers' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association,

a joint venture or any other kind of entity, or create a presumption that the Holders are in any way acting in concert with respect to such obligations or the transactions contemplated by this Agreement. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose.

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

**NOVATEL WIRELESS, INC.**

By: /s/ PETER V. LEPARULO

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Name: Peter V. Leparulo  
Title: Chief Executive Officer

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

[PURCHASER'S SIGNATURE PAGE TO NVTL RRA]

**OMICRON MASTER TRUST**

By: Omicron Capital L.P., as advisor

By: Omicron Capital Inc., its general partner

By: /s/ BRUCE BERNSTEIN

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Name: Bruce Bernstein

Title: CFO

[PURCHASERS' SIGNATURE PAGE FOLLOWS]

Name of Investing Entity: \_\_\_\_\_

*Signature of Authorized Signatory of Investing entity:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

## ANNEX A

### Plan of Distribution

The selling stockholders and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These sales may be at fixed or negotiated prices. The selling stockholders may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares under Rule 144 under the Securities Act, if available, rather than under this prospectus.

Broker-dealers engaged by the selling stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated. The selling stockholders do not expect these commissions and discounts to exceed what is customary in the types of transactions involved.

The selling stockholders may from time to time pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders and any broker-dealers or agents that are involved in selling the shares may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. The selling stockholders have informed Novatel Wireless that they do not have any agreement or understanding, directly or indirectly, with any person to distribute the common stock.

Novatel Wireless is required to pay certain fees and expenses incurred incident to the registration of the shares. Novatel Wireless has agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

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Because the selling security holder may be deemed an underwriter, each selling security holder must deliver this prospectus and any supplements to this prospectus in the manner required by the Security Act.

Novatel Wireless paid Robert Cohen a placement fee of \$400,000 in connection with the issuance and sale of the securities to the selling stockholders.

NEITHER THIS SECURITY NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT.

### COMMON STOCK PURCHASE WARRANT

To Purchase \_\_\_\_\_ Shares of Common Stock of

**Novatel Wireless, Inc.**

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") CERTIFIES that, for value received, \_\_\_\_\_ (the "Holder"), is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after January 13, 2004 (the "Initial Exercise Date") and on or prior to the fifth anniversary of the Initial Exercise Date (the "Termination Date") but not thereafter, to subscribe for and purchase from Novatel Wireless, Inc., a corporation incorporated in the State of Delaware (the "Company"), up to \_\_\_\_\_ shares (the "Warrant Shares") of Common Stock, par value \$0.001 per share, of the Company (the "Common Stock"). The purchase price of one share of Common Stock (the "Exercise Price") under this Warrant shall be **\$8.833**. The Exercise Price and the number of Warrant Shares for which the Warrant is exercisable shall be subject to adjustment as provided herein. **Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated January 13, 2004, among the Company and the purchasers signatory thereto. In the event of any conflict between the terms of this Warrant and the Purchase Agreement, the Purchase Agreement shall control.**

1. [RESERVED]

2. Authorization of Shares. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

3. Exercise of Warrant.

(a) Exercise of the purchase rights represented by this Warrant may be made at any time or times on or after the Initial Exercise Date and before 5 p.m. (Los Angeles, California time) on the Termination Date by the surrender of this Warrant and the Notice of Exercise Form annexed hereto duly executed, at the office of the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of such Holder appearing on the books of the Company) and upon payment of the Exercise Price of the shares thereby purchased by wire transfer or cashier's check drawn on a United States

bank (the date all of the aforementioned items have been delivered to the Company, the "Exercise Date"), or by means of a cashless exercise pursuant to paragraph (d) below, the Holder shall be entitled to receive a certificate for the number of Warrant Shares so purchased. This Warrant shall expire at 5 p.m. (Los Angeles, California time) on the Termination Date and be void thereafter. Certificates for shares purchased hereunder shall be delivered to the Holder within 3 Trading Days after the Exercise Date (the "Warrant Share Delivery Date"); provided, however, at least 3 Trading Days prior to the Exercise Date, the Holder shall have delivered to the Company a duly executed facsimile copy of the Notice of Exercise Form annexed hereto. Notwithstanding anything herein to the contrary, the Warrant Share Delivery Date shall be extended one Trading Day for each Trading Day the Holder fails to give prior notice of exercise as required hereunder, up to a maximum of 3 Trading Days. This Warrant shall be deemed to have been exercised and such certificate or certificates shall be deemed to have been issued, and Holder or, subject to compliance with Section 7(a) and with all applicable securities laws, any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the close of business on the Exercise Date. If the Company fails to deliver to the Holder a certificate or certificates representing the Warrant Shares pursuant to this Section 3(a) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise. In addition to any other rights available to the Holder, if the Company fails to cause its transfer agent to deliver to the Holder a certificate or certificates representing the Warrant Shares pursuant to a proper exercise by the third Trading Day after the Warrant Share Delivery Date, and if after such day the Holder is required by its broker to purchase (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (1) pay in cash to the Holder the amount by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (A) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (B) the price at which the sell order giving rise to such purchase obligation was executed, and (2) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (1) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In, together with applicable confirmations and other evidence reasonably requested by the Company. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(b) If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to Holder a new Warrant evidencing the rights of Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(c) The Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 3(a) or otherwise, to the extent that after giving effect to such issuance after exercise, the Holder (together with the Holder's affiliates), as set forth on the applicable Notice of Exercise, would beneficially own in excess of 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to such issuance. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its affiliates and (B) exercise or conversion of the

unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 3(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. To the extent that the limitation contained in this Section 3(c) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder) and of which a portion of this Warrant is exercisable shall be in the sole discretion of such Holder, and the submission of a Notice of Exercise shall be deemed to be such Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by such Holder) and of which portion of this Warrant is exercisable, in each case subject to such aggregate percentage limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. For purposes of this Section 3(c), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Form 10-Q or Form 10-K, as the case may be, (y) a more recent public announcement by the Company or (z) any other notice by the Company or the Company's Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of the Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its affiliates since the date as of which such number of outstanding shares of Common Stock was reported.

(d) If, but only if, at any time after one year from the date of issuance of this Warrant there is no effective Registration Statement registering the resale of the Warrant Shares by the Holder, this Warrant may also be exercised at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a certificate for the number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = the VWAP on the Trading Day immediately preceding the date of such election;

(B) = the Exercise Price of this Warrant, as adjusted; and

(X) = the number of Warrant Shares issuable upon exercise of this Warrant in accordance with the terms of this Warrant by means of a cash exercise rather than a cashless exercise.

4. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which Holder would otherwise be entitled to purchase upon such exercise, the Company shall pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price.

5. Charges, Taxes and Expenses. Issuance of certificates for Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or, subject to compliance with Section 7(a) and all applicable securities laws, in such name or names as may be directed by the Holder; provided, however, that in the event certificates for Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder; and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

6. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

## 7. Transfer, Division and Combination.

(a) This Warrant and the Warrant Shares shall not be sold, transferred, pledged or hypothecated unless the proposed disposition is the subject of a currently effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), or unless the Company has received an opinion of counsel reasonably satisfactory in form and scope to the Company that such registration is not required. Prior to 5 p.m. (Los Angeles, California time) on the Termination Date and subject to compliance with this Section 7(a) and any applicable securities laws, this Warrant and all rights hereunder are transferable, in whole or in part, at the office or agency of the Company by the Holder in person or by duly authorized attorney, upon surrender of this Warrant together with the Assignment Form annexed hereto properly endorsed and funds sufficient to pay any transfer taxes payable upon the making of such transfer.

(b) Subject to compliance with Section 7(a) and with any applicable securities laws, transfer of this Warrant and all rights hereunder, in whole or in part, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant at the principal office of the Company, together with the Assignment Form annexed hereto properly endorsed and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. A Warrant, if properly assigned, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(c) Subject to compliance with Section 7(a) and all applicable securities laws, this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. As to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice.

(d) The Company shall prepare, issue and deliver at its own expense (other than transfer taxes) the new Warrant or Warrants under this Section 7.

The Company agrees to maintain, at its aforesaid office, books for the registration and the registration of transfer of the Warrants.

8. No Rights as Shareholder until Exercise. This Warrant does not entitle the Holder to any voting rights or other rights as a shareholder of the Company prior to the exercise hereof. Upon the surrender of this Warrant, delivery of a duly executed Notice of Warrant Exercise Form and the payment of the aggregate Exercise Price (or by means of a cashless exercise), the Warrant Shares so purchased shall be and be deemed to be issued to such Holder as the record owner of such shares as of the close of business on the later of the date of such surrender or payment.

9. Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it, and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

10. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday, Sunday or a legal holiday, then such action may be taken or such right may be exercised on the next succeeding day not a Saturday, Sunday or legal holiday.

11. Adjustments of Exercise Price and Number of Warrant Shares; Stock Splits, Etc. The number and kind of securities purchasable upon the exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time upon the happening of any of the following. In case the Company shall (i) pay a dividend in shares of Common Stock or make a distribution in shares of Common Stock to holders of its outstanding Common Stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares, (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, or (iv) issue any shares of its capital stock in a reclassification of the Common Stock, then the number of Warrant Shares purchasable upon exercise of this Warrant immediately prior thereto shall be adjusted so that the Holder shall be entitled to receive the kind and number of Warrant Shares or other securities of the Company which it would have owned or have been entitled to receive had such Warrant been exercised in advance thereof. Upon each such adjustment of the kind and number of Warrant Shares or other securities of the Company which are purchasable hereunder, the Holder shall thereafter be entitled to purchase the number of Warrant Shares or other securities resulting from such adjustment at an Exercise Price per Warrant Share or other security obtained by multiplying the Exercise Price in effect immediately prior to such adjustment by the number of Warrant Shares purchasable pursuant hereto immediately prior to such adjustment and dividing by the number of Warrant Shares or other securities of the Company that are purchasable pursuant hereto immediately thereafter. An adjustment made pursuant to this paragraph shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

12. Reorganization, Reclassification, Merger, Consolidation or Disposition of Assets. In case the Company shall reorganize its capital, reclassify its capital stock, consolidate or merge with or into another corporation (where the Company is not the surviving corporation or where there is a change in or distribution with respect to the Common Stock of the Company), or sell, transfer or otherwise dispose of substantially all its property, assets or business to another corporation and, pursuant to the terms of such reorganization, reclassification, merger, consolidation or disposition of assets, shares of common stock of the successor or acquiring corporation, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring corporation ("Other Property"), are to be received by or distributed to the holders of Common Stock of the Company, then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and Other Property receivable upon or as a result of such reorganization, reclassification, merger, consolidation or disposition of assets by a Holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such event. In case of any such reorganization, reclassification, merger, consolidation or disposition of assets, the successor or acquiring corporation (if other than the Company) shall expressly assume the due and punctual observance and performance of each and every covenant and condition of this Warrant to be performed and observed by the Company and all the obligations and liabilities hereunder, subject to such modifications as may be deemed appropriate (as determined in good faith by resolution of the Board of Directors of the Company) in order to provide for adjustments of Warrant Shares for which this Warrant is exercisable which shall be as nearly equivalent as practicable to the adjustments provided for in this Section 12. For purposes of this Section 12, "common stock of the successor or acquiring corporation" shall include stock of such corporation of any class which is not preferred as to dividends or assets over any other class of stock of such corporation and which is not subject to redemption and shall also include any evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable for any such stock, either immediately or upon the arrival of a specified date or the happening of a specified event and any warrants or other rights to subscribe for or purchase any such stock. The foregoing provisions of this Section 12 shall similarly apply to successive reorganizations, reclassifications, mergers, consolidations or disposition of assets.

13. Voluntary Adjustment by the Company. The Company may at any time during the term of this Warrant reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

14. Notice of Adjustment. Whenever the number of Warrant Shares or number or kind of securities or other property purchasable upon the exercise of this Warrant or the Exercise Price is adjusted, as herein provided, the Company shall give notice thereof to the Holder, which notice shall state the number of Warrant Shares (and other securities or property) purchasable upon the exercise of this Warrant and the Exercise Price of such Warrant Shares (and other securities or property) after such adjustment, setting forth a brief statement of the facts requiring such adjustment and setting forth the computation by which such adjustment was made.

15. Notice of Corporate Action. If at any time:

(a) the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, or any right to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property, or to receive any other right, or

(b) there shall be any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any consolidation or merger of the Company with, or any sale, transfer or other disposition of all or substantially all the property, assets or business of the Company to, another corporation or,

(c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of such cases, the Company shall give to Holder, if lawful to do so, (i) at least 20 calendar days' prior written notice of the date on which a record date shall be selected for such dividend, distribution or right or for determining rights to vote in respect of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, liquidation or winding up, and (ii) in the case of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, at least 20 calendar days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause also shall specify (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, the date on which the holders of Common Stock shall be entitled to any such dividend, distribution or right, and the amount and character thereof, and (ii) the date on which any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up is to take place and the time, if any such time is to be fixed, as of which the holders of Common Stock shall be entitled to exchange their Warrant Shares for securities or other property deliverable upon such disposition, dissolution, liquidation or winding up. Each such written notice shall be sufficiently given if addressed to Holder at the last address of Holder appearing on the books of the Company and delivered in accordance with Section 17(d).

16. Authorized Shares. The Company covenants that during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company represents that its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Warrant Shares upon the exercise of the purchase rights under this Warrant will, upon the issuance of this Warrant, be fully authorized to do so. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed.

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate

to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant, and (c) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

17. Miscellaneous.

(a) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

(b) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, will have restrictions upon resale imposed by state and federal securities laws.

(c) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice Holder's rights, powers or remedies, notwithstanding all rights hereunder terminate at 5 p.m. (Los Angeles, California time) on the Termination Date. If the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(d) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

(e) Limitation of Liability. No provision hereof, in the absence of any affirmative action by Holder to exercise this Warrant or purchase Warrant Shares, and no enumeration herein of the rights or privileges of Holder, shall give rise to any liability of Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(f) Remedies. Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(g) Successors and Assigns. Subject to compliance with Section 7(a) and all applicable securities laws and the provisions of this Warrant, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant and shall be enforceable by any such Holder or holder of Warrant Shares.

(h) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(i) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(j) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

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IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized.

Dated: January 13, 2004

**NOVATEL WIRELESS, INC.**

By: /s/ PETER V. LEPARULO

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Name: Peter V. Leparulo  
Title: Chief Executive Officer

**NOTICE OF EXERCISE**

To: Novatel Wireless, Inc.

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of Novatel Wireless, Inc. pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of the United States; or

the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 3(d), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 3(d).

(3) Please issue a certificate or certificates representing said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following:

(4) Accredited Investor. The undersigned is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[PURCHASER]

By: \_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_

**ASSIGNMENT FORM**

(To assign the foregoing warrant, execute this form and supply required information. Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

\_\_\_\_\_ whose address is  
\_\_\_\_\_.

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever, and must be guaranteed by a bank or trust company. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

**Subsidiaries of Novatel Wireless, Inc.:**

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Novatel Wireless Technologies, Ltd.  
Novatel Wireless Solutions, Inc.

**State or Other Jurisdiction of  
Incorporation or Organization**

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Canada  
Delaware

## INDEPENDENT AUDITORS' CONSENT

The Board of Directors  
Novatel Wireless, Inc.:

We consent to the incorporation by reference in the registration statements (No. 333-53692) on Form S-8 and (Nos. 333-112857 and 333-109321) on Form S-3 of Novatel Wireless, Inc. and subsidiaries of our report dated February 9, 2004, except for paragraph 6 of Note 12 as to which the date is March 11, 2004, with respect to the consolidated balance sheets of Novatel Wireless, Inc. as of December 31, 2003 and 2002, and the related consolidated statements of operations, stockholders' equity, and cash flows, for the years then ended, and related financial statement Schedule II, which report appears in the December 31, 2003, annual report on Form 10-K of Novatel Wireless, Inc. Our report dated February 9, 2004 refers to revisions that were applied to the consolidated financial statements to retroactively reflect a 1-for-15 reverse stock split of Novatel Wireless, Inc.'s common stock approved on October 29, 2002.

/s/ KPMG LLP

San Diego, California  
March 11, 2004

**NOTICE REGARDING CONSENT OF ARTHUR ANDERSEN LLP**

Section 11(a) of the Securities Act of 1933, as amended (the "Securities Act"), provides that if any part of a registration statement at the time such part becomes effective contains an untrue statement of a material fact or an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring a security pursuant to such registration statement (unless it is proved that at the time of such acquisition such person knew of such untruth or omission) may sue, among others, every accountant who has consented to be named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report or valuation which purports to have been prepared or certified by the accountant.

As previously disclosed in the company's form 8-k filed on July 17, 2002, the Company dismissed Arthur Andersen LLP as its independent public accountants and announced that the company had appointed KPMG LLP to replace Arthur Andersen LLP as its independent public accountants.

Novatel's understanding is that the staff of the Securities and Exchange Commission has taken the position that it will not accept consents from Arthur Andersen LLP if the engagement partner and the manager for the Novatel audit are no longer with Arthur Andersen LLP. Both the engagement partner and the manager for the Novatel audit are no longer with Arthur Andersen LLP. As a result, Novatel has been unable to obtain Arthur Andersen LLP's written consent to the incorporation by reference into the Registration Statements of its audit report with respect to Novatel's financial statements as of December 31, 2001 and 2000 for the years then ended.

Under these circumstances, Rule 437a under the Securities Act permits Novatel to file this Form 10-K without a written consent from Arthur Andersen LLP. As a result, however, Arthur Andersen LLP will not have any liability under Section 11(a) of the Securities Act for any untrue statements of a material fact contained in the financial statements audited by Arthur Andersen LLP or any omissions of a material fact required to be stated therein. Accordingly, you would be unable to assert a claim against Arthur Andersen LLP under Section 11(a) of the Securities Act for any purchases of securities under the Registration Statements made on or after the date of this Form 10-K. To the extent provided in Section 11(b)(3)(C) of the Securities Act, however, other persons who are liable under Section 11(a) of the Securities Act, including the Company's officers and directors, may still rely on Arthur Andersen LLP's original audit reports as being made by an expert for purposes of establishing a due diligence defense under Section 11(b) of the Securities Act.

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Peter Leparulo, certify that:

1. I have reviewed this annual report on Form 10-K of Novatel Wireless Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of this annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ PETER LEPARULO

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**Peter Leparulo**  
**Chief Executive Officer**

Dated: March 11, 2004

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Dan L. Halvorson, certify that:

1. I have reviewed this annual report on Form 10-K of Novatel Wireless Inc.;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of this annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ DAN L. HALVORSON

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**Dan L. Halvorson**  
**Vice President, Finance, Chief Accounting Officer**  
**and Treasurer, Principal Financial and Accounting Officer**

Dated: March 11, 2004

**CERTIFICATIONS**

Each of the undersigned, in his capacity as the Chief Executive Officer and Chief Accounting Officer of Novatel Wireless Inc., as the case may be, provides the following certifications required by 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002:

1. This Report on Form 10-K fully complies with the requirements of Section 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the Company.

**IN WITNESS WHEREOF**, the undersigned have set their hands hereto as of the 11th day of March, 2004.

/s/ PETER LEPARULO

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**Peter Leparulo**  
Chief Executive Officer

/s/ DAN L. HALVORSON

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**Dan L. Halvorson**  
Vice President, Finance, Chief Accounting Officer  
and Treasurer, Principal Financial and Accounting Officer