

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8849 / September 27, 2007

SECURITIES EXCHANGE ACT OF 1934
Release No. 56547 / September 27, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12841

In the Matter of

INTERVOICE, INC.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Intervoice, Inc., formerly known as Intervoice-Brite, Inc. (“Intervoice” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:¹

Summary

From at least 2000 through at least February 2002 (the "relevant period"), Intervoice, acting through its then chief financial officer ("CFO"), improperly recognized revenue on seven transactions (the "relevant transactions") under circumstances in which revenue recognition was prohibited pursuant to generally accepted accounting principles ("GAAP") and to Respondent's own accounting policies. This conduct resulted in Intervoice's publication of materially false and misleading financial information in financial statements that Intervoice filed with the Commission. As a result, during the relevant period, Intervoice's public filings with the Commission contained quarterly and annual financial information that materially misstated its: (i) net income for the fiscal quarter ended February 29, 2000; (ii) net loss for the fiscal year ended February 29, 2000, (iii) net income for the fiscal quarter ended November 30, 2000, (iv) net income for the fiscal quarter ended May 31, 2001; and (v) net income for the fiscal quarter ended August 31, 2001.

Intervoice's recognition of revenue from these transactions did not comport with GAAP or the company's accounting policies because, among other things, the transactions involved undocumented terms, including provisions that permitted Intervoice's distributors to return the products without penalty and to forgo payment until they had sold the products to their end users. In addition, Intervoice, acting through its then CFO, agreed to reconfigure or substitute products to suit the needs of its distributors' end users.

Respondent

1. Intervoice, a Texas corporation based in Dallas, develops, sells, and supports software designed to automate and personalize access to information and services. At all relevant times, Intervoice's common stock was registered under Section 12(g) of the Exchange Act and quoted on the NASDAQ National Market. Respondent's fiscal year ends on February 28 or 29.

Facts

2. In the fourth quarter of fiscal 2000, ended February 29, 2000, Intervoice recorded in its books and records and improperly recognized revenue in a quarter-end barter transaction. Specifically, Intervoice sold hardware and software to a company, Speechworks, Inc. ("Speechworks"), which normally provided software products to Intervoice, in that company's capacity as a reseller of Intervoice products, recognizing revenue of approximately \$1,196,130. However, in connection with this transaction, Intervoice's then CFO agreed in advance to reconfigure the hardware and software products, or to substitute products of commensurate

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

value, in order to meet the needs of the ultimate end users, thereby precluding revenue recognition under GAAP.

3. Also in the fourth quarter of fiscal 2000, ended February 29, 2000, Intervoice improperly recorded in its books and records and recognized revenue of approximately \$1,106,553 related to the sale of hardware and software to another reseller of Intervoice products. Recognition of revenue on this transaction was improper in light of post-shipment obligations agreed to by Intervoice's then CFO, including the obligation to reconfigure products or substitute products of commensurate value to meet the needs of the ultimate end users. As a result of the two fourth quarter transactions described above, Intervoice overstated its net income for the quarter by 19%, and understated net loss for the fiscal year ended February 29, 2000 by 8%, which it reported in its Form 10-K filed with the Commission on May 26, 2000.

4. In the third quarter of fiscal 2001, ended November 30, 2000, Intervoice improperly recorded and reported approximately \$1.4 million of revenue by arranging for the improper recognition of deferred revenue associated with hardware systems sold to Speechworks during the prior fiscal year. In the first fiscal quarter of 2001, Intervoice implemented new accounting procedures pursuant to SEC's Staff Accounting Bulletin No. 101 ("SAB 101"). As part of the SAB 101 implementation, Intervoice deferred approximately \$1.4 million of previously recognized revenue associated with hardware sales to Speechworks (most of which related to the fourth quarter 2000 sale described above) for which Intervoice retained a post-shipment installation obligation. In or about October 2000, Intervoice's then CFO had Speechworks sign releases that contained a false acknowledgement that Speechworks had purportedly installed the products and released Intervoice from its installation obligation. Intervoice's then CFO knew the releases were false and misleading because he knew that the products were still in a third party warehouse and that Intervoice would still install the products. Relying on the false releases, Intervoice improperly recognized approximately \$1.4 million in revenue. As a result, Intervoice overstated its net income for the quarter by 242%, which it reported in its Form 10-Q for the third fiscal quarter of 2001, filed with the Commission on January 12, 2001.

5. In the fourth quarter of fiscal 2001, pursuant to a transaction negotiated by Intervoice's then CFO, Intervoice paid \$900,000 to Speechworks, which was by then a public company, in exchange for Speechworks' amendment of a warrant that it had previously issued to Intervoice. The amendment included a provision allowing cashless exercise of the warrant. If Intervoice had not compensated Speechworks for amending the warrant, Intervoice would have been able to tack the holding period of the original and amended warrant to the holding period of the underlying common shares pursuant to Rule 144(d)(3)(ii) under the Securities Act thereby satisfying the one year holding period requirement of Rule 144(d)(1). As a result, Intervoice would have been able to resell the underlying common shares in the open market immediately after exercising the warrant and without registration pursuant to the exemption provided in Section 4(1) of the Securities Act. Because of the \$900,000 payment to Speechworks, however, tacking of the holding period was not allowed, a new holding period commenced upon issuance of the underlying common shares, and Intervoice's premature resales in the public market were not eligible for an exemption from securities registration pursuant to Section 4(1). Speechworks' shares should have been issued to Intervoice as restricted stock that could not be resold in the

open market until February 2002, unless such resale was registered or another exemption from registration applied. Nonetheless, Intervoice sold the shares of Speechworks' stock for gross proceeds of \$21.4 million in reliance on a registration exemption that was in fact not available.

6. In the first quarter of fiscal 2002, ended May 31, 2001, Intervoice improperly recorded in its books and records and recognized revenue of approximately \$999,960 when it sold hardware and software to Speechworks in its capacity as a reseller of Intervoice products. Recognition of revenue on this transaction was improper in light of post-shipment obligations agreed to by Intervoice's then CFO, including the obligation to reconfigure products or substitute products of commensurate value to meet the needs of Speechworks' ultimate end users. As a result of this conduct, Intervoice overstated its net income for the quarter by 67%, which it reported in its Form 10-Q filed with the Commission on June 29, 2001.

7. In the second quarter of fiscal 2002, ended August 31, 2001, Intervoice improperly recorded in its books and records and recognized revenue of approximately \$742,751 and \$1,078,738, respectively, on two transactions involving hardware and software sales to two resellers. Recognition of revenue on each of these transactions was improper in light of post-shipment obligations agreed to by Intervoice's then CFO, including the obligations to reconfigure products or substitute products of commensurate value to meet the needs of the ultimate end users. In addition, recognition of the \$1,078,738 was improper because Intervoice's then CFO granted the reseller the right to return the products if the ultimate end user failed to buy the products.

8. In the second and third quarters of fiscal 2002, ended August 31, 2001 and November 30, 2001, respectively, Intervoice improperly recorded in its books and records and recognized revenue on two related transactions involving hardware and software sales to a reseller, for approximately \$5.1 million and \$300,000 respectively. Intervoice subsequently reversed the revenues associated with both transactions during the fourth quarter of fiscal 2002 in connection with a return of the products. Recognition of revenue on these transactions was improper in light of post-shipment obligations agreed to by Intervoice's then CFO, including the obligation to reconfigure products or substitute products of commensurate value to meet the needs of the ultimate end users. In addition, recognition of the revenue was improper because Intervoice's then CFO granted the reseller the right to return the products if the ultimate end user failed to buy the products. As a result of the \$5.1 million, \$1,078,738, and \$742,751 second quarter transactions described above, Intervoice reported net income of \$1.7 million in its fiscal quarter ended August 31, 2001 (which it included in its Form 10-Q filed with the Commission on October 9, 2001), when it should have reported a net loss of \$1.5 million.

9. As a result of the conduct described above, Intervoice, acting through its then CFO, knew, or was reckless in not knowing, that its periodic reports filed with the Commission during the relevant period contained materially misstated financial information and other false and misleading statements. In addition, Intervoice republished materially misstated financial information and other false and misleading statements in certain subsequent filings with the Commission in 2002 through 2004.

10. Intervoice offered securities in 2000 and 2001 while its periodic reports filed with the Commission contained materially misstated financial information. In October 1999, Intervoice filed with the Commission a Form S-8 registering securities to be offered pursuant to an employee stock option plan. The Form S-8 incorporated by reference all Exchange Act reports subsequently filed by Intervoice until such time as the offering terminated.

11. As a result of the conduct described above, Intervoice violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

12. As a result of the conduct described above, Intervoice violated Sections 5(a) and 5(c) of the Securities Act, which prohibit the offer and sale of securities through the mails or in interstate commerce, unless a registration statement is filed or in effect as to such securities or a valid exemption from registration applies.

13. As a result of the conduct described above, Intervoice violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder, which require issuers to file true, accurate, and complete periodic reports with the Commission.

14. As a result of the conduct described above, Intervoice violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and disposition of their assets.

15. As a result of the conduct described above, Intervoice violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and prohibits them from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account.

Remedial Efforts by Intervoice

In determining to accept Intervoice's Offer, the Commission considered remedial acts promptly undertaken by Respondent and extensive cooperation afforded the Commission staff.

Undertakings

Respondent has undertaken to cooperate fully with the Commission in any and all investigations, litigations, or other proceedings brought by the Commission relating to or arising from the matters described in the Order, and undertakes:

A. To comply with any and all reasonable requests by the Commission's staff for company documents or other information;

B. To be interviewed, and to make its officers, directors, employees, agents and other representatives available to be interviewed, by the Commission's staff at such times as the Commission's staff reasonably may direct;

C. To appear and testify, and to make its officers, directors, employees, agents and other representatives available to appear and testify in such investigations, depositions, hearings or trials as the Commission's staff reasonably may direct;

D. That in connection with any (i) testimony of Respondent or its officers, directors, employees, agents and other representatives to be conducted by testimony session, deposition, hearing or trial, or (ii) requests for documents or other information, that any notice of subpoena for such may be addressed to their counsel, and be served by mail or facsimile.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Intervoice's Offer.

Accordingly, it is hereby ORDERED that:

A. Respondent Intervoice cease and desist from committing or causing any violations and any future violations of Section 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder.

B. Respondent shall, within 30 days of the entry of the Order, pay disgorgement of \$701,629.49 and prejudgment interest of \$240,999.77 to the United States Treasury in connection with Respondent's amendment and exercise of a warrant issued by a supplier to Respondent and sale of the shares underlying such warrant, as discussed in Section III(5) above. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check, or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312; and (D) submitted under a cover letter that identifies Intervoice as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Kevin Kelcourse, Branch Chief, Division of Enforcement, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

Respondent agrees that if the full amount of any payment described above is not made by the date the payment is required by this Order, the entire amount of disgorgement and

prejudgment interest of \$942,629.26, plus any interest accrued pursuant to SEC Rule of Practice 600 minus payments made, if any, is due and payable immediately without further application.

By the Commission.

Nancy M. Morris
Secretary