

Edgar Filing: ELEC COMMUNICATIONS CORP - Form 10KSB/A

ELEC COMMUNICATIONS CORP
Form 10KSB/A
May 25, 2005

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-KSB/A

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

For the fiscal year ended November 30, 2004

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

For the transition period from _____ to _____.

Commission File No. 0-4465
eLEC COMMUNICATIONS CORP.
(Name of Small Business Issuer in Its Charter)

New York
(State or Other Jurisdiction
of Incorporation or Organization)

13-2511270
(I.R.S Employer
Identification No.)

75 South Broadway, Suite 302, White Plains, New York
(Address of Principal Executive Offices)

10601
(Zip Code)

(914) 682-0214
(Issuer's Telephone Number, Including Area Code)

Securities registered under Section 12(b) of the Exchange Act:

None

Securities registered under Section 12(g) of the Exchange Act:

Common Stock, par value \$.10 per share

Check whether the issuer: (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 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 X No .
--- ---

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B is not contained in this form, and no disclosure will 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-KSB or any amendment to this Form 10-KSB.

State issuer's revenue for its most recent fiscal year: \$9,557,600

As of February 28, 2005, the aggregate market value of the voting and non-voting common equity held by non-affiliates of the issuer was \$8,793,668.

Edgar Filing: ELEC COMMUNICATIONS CORP - Form 10KSB/A

As of February 28, 2005, there were 16,759,282 shares outstanding of the issuer's Common Stock.

Documents incorporated by reference: Definitive proxy statement of eLEC Communications Corp. relating to the Annual Meeting of Stockholder filed with the Commission within 120 days after the end of the fiscal year covered by this Form 10-KSB, which is incorporated into Part II of this Form 10-KSB.

Transitional Small Business Disclosure Format (check one): Yes No

EXPLANATORY NOTE FOR FILING OF FORM 10-KSB/A

This Amendment No. 2 to our Annual Report on Form 10-KSB for the fiscal year ended November 30, 2004, which was originally filed on March 15, 2005 (as amended by Amendment No. 1 to Form 10-KSB filed on April 26, 2005, the "Original Filing"), amends and restates in its entirety Item 8A of Part II of the Original Filing to amend and supplement the information regarding disclosure controls and procedures required by Item 307 of Regulation S-B. Item 13 of Part III has also been amended to reflect the inclusion of updated certifications of Paul H. Riss, our Chief Executive Officer and Chief Financial Officer, filed herewith as Exhibit 31.1 and 32.1.

The other Items of the Original Filing are unaffected by the changes described above and have not been amended in this Amendment No. 2 on Form 10-KSB/A to the Annual Report. All information in this Amendment No. 2 on Form 10-KSB/A to the Annual Report is as of the date of the Original Filing and does not reflect any subsequent information or events occurring after the date of the Original Filing. Accordingly, this Amendment No. 2 on Form 10-KSB/A to the Annual Report should be read in conjunction with our filings made with the Securities and Exchange Commission subsequent to the filing of the Original Filing, including any amendments to those filings.

PART II

Item 8A. Controls and Procedures.

(a) Disclosure Controls and Procedures. Our management, with the participation of our chief executive officer/chief financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this Report. Based on such evaluation, our chief executive officer/chief financial officer has concluded that, as of the end of such period, for the reasons set forth below, our disclosure controls and procedures were not effective. We are presently taking the necessary steps to improve the effectiveness of such disclosure controls and procedures.

(b) Internal Control Over Financial Reporting. There have not been any changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fourth quarter of 2004 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. In connection with our year-end November 30, 2004 audit, our management became aware of a lack of segregation of duties within our accounting and administrative departments due to the small number of employees performing our financial and administrative functions. Management believes the lack of segregation of duties, in the aggregate, amounts to a material weakness in our

Edgar Filing: ELEC COMMUNICATIONS CORP - Form 10KSB/A

internal control over financial reporting. We will continue to evaluate the employees involved, the additional control procedures in place to help compensate for the lack of segregation of duties, the risks associated with such lack of segregation and whether the potential benefits of adding employees to clearly segregate duties justifies the expense associated with such increases.

We are also evaluating our internal controls systems so that when we are required to do so, our management will be able to report on, and our independent auditors to attest to, our internal controls, as required by Section 404 of the Sarbanes-Oxley Act of 2002. We will be performing the system and process evaluation and testing (and any necessary remediation) required in an effort to comply with the

management certification and auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act. In connection with our year-end November 30, 2004 audit, we have identified the following control deficiencies and issues with our internal controls over financial reporting that we believe amount in the aggregate to a significant deficiency in our internal controls over financial reporting:

- o We are aware that many of the internal controls that are in place are undocumented controls. Although we have documented many of our systems and processes, we will need to expend a substantial amount of time to obtain the full documentation required to be in compliance with Section 404 of the Sarbanes-Oxley Act of 2002.
- o After the end of our fiscal year, when we were preparing state tax returns for telecommunication taxes, we identified that we had been overstating telecom taxes payable for certain taxes that were paid by us directly to our carrier instead of being paid directly to the taxing authorities. We have adjusted our controls to mitigate this type of event from occurring in future periods.

Due to the voluminous nature of state and local telecom taxes and the small quantity of taxes payable to certain municipalities, we do not remit all our telecom taxes in a timely manner. Certain taxes that we should be remitting on a monthly basis, we remit quarterly or semi-annually because many of the checks and returns that we are processing are for payments of less than \$50. We are aware of other telephone companies that follow this process. We continue to monitor the responses, if any, we receive from the tax authorities regarding late filings and we do not intend to remit such taxes on a timely manner in the future, unless we determine that it would be more cost-effective to us to do so.

PART III

Item 13. - Exhibits List and Reports on Form 8-K.

(a) Exhibits List. The following exhibits are filed with this Report:

(31.1) Certification of our Chief Executive Officer and Chief Financial Officer, Paul H. Riss, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

(32.1) Certification of our Chief Executive Officer and Chief Financial Officer, Paul H. Riss, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, we have duly caused this Report to be signed on our behalf by the undersigned, thereunto duly authorized on the 25th day of May 2005.

eLEC COMMUNICATIONS CORP.
(Company)

By: /s/ Paul H. Riss

Paul H. Riss
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Company and in the capacities and on the dates indicated.

Signature	Title	Date
-----	-----	-----
/s/ Paul H. Riss ----- Paul H. Riss	Chairman of the Board of Directors Chief Executive Officer Chief Financial Officer (Principal Accounting Officer)	May 25, 2005
/s/ Greg M Cooper ----- Greg M Cooper	Director	May 25, 2005
/s/ Gayle Greer ----- Gayle Greer	Director	May 25, 2005
/s/ Michael Khalilian ----- Michael Khalilian	Director	May 25, 2005