EXELON CORP
Form FWP
March 29, 2017

Filed pursuant to Rule 433

Relating to Preliminary Prospectus Supplement dated March 29, 2017

to Prospectus dated May 23, 2014

Registration No. 333-196220

EXELON CORPORATION

FINAL TERM SHEET

March 29, 2017

Issuer:	Exelon Corporation
Title:	3.497% Junior Subordinated Notes due 2022[1]
Principal Amount:	$1,150,000,000
Expected Ratings (Moody s/S&P/Fitch)[2]:	Baa3 (stable outlook) / BBB- (stable outlook) / BBB- (stable outlook)
Trade Date:	March 29, 2017
Settlement Date:	April 3, 2017
Final Maturity Date:	June 1, 2022
Interest Payment Dates:	June 1 and December 1
First Interest Payment Date:	June 1, 2017, which payment will include interest accrued at an annual rate of 2.50% from, and including, March 1, 2017 to, but excluding, April 3, 2017 and at an annual rate of 3.497% from, and including, April 3, 2017 to, but excluding, June 1, 2017.
Redemption:	At any time on and after May 1, 2022 (1 month prior to the maturity date of the Notes), the Notes may be redeemed, at the issuer s option, in whole or in part, at a redemption price equal to 100% of the principal amount of Notes then outstanding to be redeemed plus accrued and unpaid interest on the principal amount being redeemed to, but excluding, the redemption date.
Benchmark Treasury:	1.875% due February 28, 2022

1 This communication relates to the remarketing of the issuer s 2.50% Junior Subordinated Notes due 2024. Following the remarketing, the notes will be redesignated as the 3.497% Junior Subordinated Notes due 2022.

2 A securities rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time.

Benchmark Treasury Yield:	1.933%
Benchmark Treasury Price:	99-23 1/4
Spread to Benchmark Treasury:	+150 bps
Reoffer Yield:	3.433%
Coupon:	3.497%
Price to Public:	100.303%, plus interest accrued at an annual rate of 2.50% from, and including, March 1, 2017 to, but excluding, April 3, 2017.
Remarketing Fee:[3]	0.600%
CUSIP/ISIN:	30161N AW1 / US30161NAW11
Joint Book-Running Remarketing Agents:	Citigroup Global Markets Inc. Goldman, Sachs & Co. Merrill Lynch, Pierce, Fenner & Smith Incorporated Credit Agricole Securities (USA) Inc. Credit Suisse Securities (USA) LLC PNC Capital Markets LLC
Senior Co-Managing Remarketing Agent:	Loop Capital Markets LLC
Co-Managing Remarketing Agents:	Lebenthal & Co., LLC Mischler Financial Group, Inc.

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC, including the preliminary prospectus supplement dated March 29, 2017, for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC web site at www.sec.gov. Alternatively, the issuer, any remarketing agent or any dealer participating in the offering will arrange to send you the prospectus and preliminary prospectus supplement if you request them by calling:

Citigroup Global Markets Inc.	1-800-831-9146
Goldman, Sachs & Co.	1-866-471-2526
Merrill Lynch, Pierce, Fenner & Smith Incorporated	1-800-294-1322

[3] To be paid by the issuer.

2

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45

370

(23

)

347

Definite lived intangible assets

2,201

(1,661

)

540

2,410

(1,368

)

1,042

Domain names

2,410

-

2,410

2,409

-

2,409

Total

$

4,611

$

(1,661

)

$

2,950

$

4,819

$

(1,368

)

$

3,451

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The following table shows the balances of intangible assets by reporting unit (in thousands):

	December 31, 2016	December 31, 2015
Jewish Networks	$601	$1,082
Christian Networks	1,616	1,616
Other Networks	718	718
Offline and Other Networks	15	35
Total	$2,950	$3,451

Amortization expense for finite-lived intangible assets for the years ended December 31, 2016 and 2015 was $293,000 and $108,000, respectively. In 2016, management identified the impairment of a finite-lived intangible asset within the Jewish Networks reporting segment based on estimates included in the second step of its quantitative test of goodwill. As a result, management recorded an impairment of $209,000 on the intangible asset. In 2015, no impairment charge was necessary.

At December 31, 2016, estimated amortization expense of finite-lived intangible assets for the three succeeding years is as follows (in thousands):

Year ending December 31,	
2017	$ 198
2018	198
2019	144
	$ 540

Note 6. Accrued Liabilities

Accrued liabilities consist of the following:

(in thousands)	December 31, 2016	December 31, 2015
Advertising	$189	$359
Compensation	561	926
Legal	102	590
Taxes payable	187	960
Other	1,551	1,019
Total	$2,590	$3,854

Note 7. Revolving Credit Facility

On January 22, 2016, the Company and certain of its direct and indirect subsidiaries, as co-borrowers, entered into a two-year Loan and Security Agreement (the “Credit Agreement”) with Western Alliance Bank, as lender (the “Bank”). Under the Credit Agreement, the Company has a revolving line of credit available of up to $10.0 million, with an aggregate sublimit of $500,000 for ancillary services (including letters of credit, cash management services and foreign exchange transaction services). The availability of credit at any given time under the revolving line of credit is limited by reference to a borrowing base formula based upon the eligible US GAAP revenue of the borrowers and an advance rate percentage calculated in accordance with the terms of the Credit Agreement.

Borrowings under the Credit Agreement bear interest at the prime rate (which has a floor of 3.25%) plus 0.25% (4.00% at December 31, 2016). In addition, the Company is required to pay a quarterly unused line fee equal to 0.30% per annum of the unused portion of the revolving line of credit during the applicable quarter. The Credit Agreement provides for interest-only payments during its term, with principal due at maturity. Pursuant to the Credit Agreement and the intellectual property security agreement entered into by each of the borrowers on January 22, 2016 (each an “IP Security Agreement”), the Company has granted to the Bank a security interest in substantially all of its respective personal property, including intellectual property, to secure the obligations under the Credit Agreement and the other loan documents.

The Credit Agreement contains various restrictive covenants (applicable, in most instances, to both the borrowers and their subsidiaries), including limitations on the ability to sell assets, change the current line of business, merge or consolidate with or into another person, incur additional debt, grant liens, pay dividends or make other distributions, make loans or other investments, enter into transactions with affiliates, make any payment in respect of any subordinated debt and make capital expenditures (without the Bank’s prior written consent) in any fiscal year in excess of $3.75 million, along with other restrictions and limitations typical to credit agreements of this type and size.

The financial covenants in the Credit Agreement, which are only tested when there are any outstanding credit extensions thereunder and/or prior to any request for a credit extension, are as follows: the Company, on a consolidated basis, must maintain (i) as of the last day of each fiscal quarter, actual minimum Adjusted EBITDA (as defined in the Credit Agreement) of at least 80% of the projected Adjusted EBITDA set forth in the annual operating budget and projections of the Company (the “Plan”) delivered to and approved by the Bank, measured on a trailing three month basis; (ii) as of the last day of each fiscal quarter, actual minimum revenue of at least 80% of the projected revenue set forth in the Plan, measured on a trailing three month basis; and (iii) unrestricted cash at the Bank of at least $3.0 million, tested monthly on the last business day of each month. As of December 31, 2016, credit extensions under the Credit Agreement were not available to the Company as a result of the foregoing financial covenants.

As of December 31, 2016, there were no outstanding borrowings under the Credit Agreement. In connection with the Credit Agreement, the Company paid deferred financing costs, with the current portion included in prepaid expenses and other, and the long-term portion classified as deposits and other assets. The deferred financing costs are amortized on a straight-line basis to interest expense and other, net in the Consolidated Statements of Operations and Comprehensive Loss through the maturity of the Credit Agreement on January 22, 2018. Amortization expense for the deferred financing costs for the year ended December 31, 2016 was $56,000. The unamortized balance of deferred financing costs was $64,000 as of December 31, 2016.

During 2015, the Company and its wholly-owned subsidiary, Spark Networks USA, LLC, had a $15.0 million revolving credit facility with Bank of America, which was entered into on February 14, 2008 with subsequent amendments (the “BofA Credit Agreement”).

On December 23, 2015, the Company terminated the BofA Credit Agreement. In connection with the termination of the BofA Credit Agreement, the Company paid $10,000 in fees.

In connection with the original BofA Credit Agreement and the first nine amendments thereto, the Company paid deferred financing costs of approximately $446,000 and $168,000, respectively. The deferred financing costs were amortized to interest expense and other, net and in the Consolidated Statements of Operations and Comprehensive Loss over the full term of the BofA Credit Agreement and were accelerated upon termination of the BofA Credit Agreement. Amortization expense for the deferred financing costs for the years ended December 31, 2015 was $26,000. At December 31, 2015 all deferred financing costs were fully amortized.

Note 8. Stockholders' Equity

Common Stock Repurchase Plan

On December 12, 2013, the Company's Board of Directors authorized the repurchase of up to $5.0 million of the Company's common stock. The repurchases may be made from time to time in the open market, in privately negotiated transactions, or otherwise, including pursuant to a Rule 10b5-1 plan, at prices that the Company deems appropriate and subject to market conditions, applicable law, including Rule 10b-18 of the Securities Exchange Act of 1934, as amended, and other factors deemed relevant in the Company's sole discretion. The Company is not obligated to repurchase any dollar amount or any number of shares of common stock, and the program may be suspended, discontinued or modified at any time, for any reason and without notice. Since December 12, 2013, the Company has repurchased 559,401 shares of common stock for $2.4 million. All stock repurchased has been retired.

On April 6, 2016, the Company's Board of Directors authorized the expansion of the repurchase program such that total availability increased from $2.6 million to $5.0 million. During the year ended December 31, 2016, the Company did not make any stock repurchases. During the year ended December 31, 2015, the Company repurchased 288,284 shares of common stock for an aggregate price of $885,000.

Employee Stock Option Plan

On July 9, 2007, pursuant to the completion of the Scheme of Arrangement, the Company adopted the 2007 Omnibus Incentive Plan (the "2007 Plan"), which initially authorized 2.5 million shares of common stock to be issued under the plan. In connection with the Company's Scheme of Arrangement, the 2004 Share Option Plan was frozen; however, all outstanding shares previously granted thereunder continue in full force and effect.

Pursuant to the 2007 Plan's "evergreen" provision, on the first day of each calendar year beginning in 2009, the number of shares reserved and available for issuance will be increased by an amount equal to the lesser of (i) 2,000,000 shares, (ii) four percent (4%) of the number of outstanding shares of Company common stock on the last day of the immediately preceding fiscal year, or (iii) an amount determined by the Board of Directors. As of December 31, 2016, the 2007 Plan had 6.2 million shares available for issuance.

Awards under the 2007 Plan may include incentive stock options, nonqualified stock options, stock appreciation rights ("SARs"), restricted shares of common stock, restricted stock units, performance stock or unit awards, other stock-based awards and cash-based incentive awards.

The Compensation Committee may grant an award to a participant. The terms and conditions of the award, including the quantity, price, vesting periods and other conditions on exercise will be determined by the Compensation Committee.

The exercise price for stock options will be determined by the Compensation Committee in its discretion, but may not be less than 100% of the closing sale price of one share of the Company's common stock on the NYSE MKT (or any other applicable exchange on which the stock is listed) on the date when the stock option is granted. Additionally, in the case of incentive stock options granted to a holder of more than 10% of the total combined voting power of all classes of stock of the Company on the date of grant, the exercise price may not be less than 110% of the closing sale price of one share of common stock on the date the stock option is granted.

For the years ended December 31, 2016, 2015, and 2014, compensation expense for stock options was $211,000, $160,000, and $440,000, respectively. As of December 31, 2016, total unrecognized compensation cost related to unvested stock options was $278,000. This cost is expected to be recognized over a weighted-average period of 2 years.

Prior to 2005, the Company did not record tax benefits of deductions resulting from the exercise of share options due to the uncertainty surrounding the timing of realizing the benefits of its deferred tax assets in future tax returns. Cash flows resulting from tax benefits associated with tax deductions in excess of the compensation cost recognized for those options (excess tax benefits) is classified as cash flows from financing activities.

Trigger Price Options

Trigger price options awarded under the 2007 Plan entitle the shareholder the right to receive common stock or the value thereof in the future subject to restrictions imposed in connection with the award.

During the year ended December 31, 2016, the Company entered into an agreement with an executive officer whereby the Company granted 360,000 trigger price options to the participant at an aggregate fair value of $51,000. During the year ended December 31, 2015, the Company entered into agreements with several executive officers and employees whereby the Company granted 1,908,000 trigger price options to the participants at an aggregate fair value of $434,000.

Compensation expense is recognized over the requisite service period of two years. For the years ended December 31, 2016 and 2015, compensation expense for trigger price options was $64,000 and $170,000. There was no compensation expense for trigger price options for the year ended December 31, 2014. Management has determined the fair value of the options as of the grant dates using a Monte Carlo simulation model. The Monte Carlo simulation model utilizes multiple input variables to estimate the probability that market conditions will be achieved. The input variables include stock price volatility and risk-free interest rate to estimate the probability of satisfying the market conditions and the resulting fair value of the award.

During the year ended December 31, 2016, the employment of three executive officers was terminated, and their trigger price options were forfeited. The Company reversed $98,000 of compensation expense related to unvested trigger price options during the year ended December 31, 2016. As of December 31, 2016, there was $11,000 of unrecognized compensation cost related to trigger price options which will be fully recognized by July 31, 2017.

The following table describes employee stock and trigger price option activity for the year ended December 31, 2016 (in thousands, except Weighted Average Price per Share):

	Number of Shares	Weighted Average Price Per Share
Outstanding at December 31, 2014	2,146	$ 4.30
Granted	1,958	8.25
Exercised	(1,308)	3.06
Expired	(332)	6.70
Forfeited	(543)	8.14
Outstanding at December 31, 2015	1,921	$ 7.67
Granted	623	5.93
Exercised	-	-
Expired	(5)	2.18
Forfeited	(1,344)	7.68
Outstanding at December 31, 2016	1,195	$ 6.77

The following table describes option activity and weighted average fair value per share for the years ended December 31, 2016, 2015 and 2014:

	Year Ended December 31,		
(in thousands, except per share amounts)	2016	2015	2014
Granted, weighted average fair value per share	$0.48	$0.25	$1.82
Exercised, weighted average intrinsic value per share	$-	$0.56	$1.73
Aggregate intrinsic value of options outstanding and exercisable	$-	$16	$726

The following is a chart showing variables which were used in the Black-Scholes option-pricing model for the years of:

	2016	2015	2014
Expected life in years	3.99 - 4.70		4.56 - 4.75

		4.45 - 4.75	
Dividend per share	—	—	—
Volatility	40.0 - 46.1%	40.0%	40.0 - 41.0%
Risk-free interest rate	0.89 - 1.43%	0.86 - 1.51%	1.58 - 1.83%

Option Range Summary

As of December 31, 2016

	Options Outstanding			Options Exercisable		
Range of Exercise Prices	Number of shares	Weighted Average Remaining Life	Weighted Average Exercise Price	Number of shares	Weighted Average Remaining Life	Weighted Average Exercise Price
$7.50 - $10.00	623	3.00	$ 9.00	-	0.00	$ -
$5.04 - $5.37	375	4.04	$ 5.29	250	3.78	$ 5.28
$1.45 - $3.45	197	7.01	$ 2.58	13	8.85	$ 3.45
	1,195	3.99	$ 6.78	263	4.02	$ 5.19

Options granted prior to 2006 were priced in foreign currency. Weighted average price per share calculations are impacted by foreign currency exchange fluctuations.

Restricted Stock Awards

Restricted shares awarded under the 2007 Plan entitle the shareholder the right to vote the restricted shares, the right to receive and retain cash dividends paid or distributed with respect to the restricted shares, and all other rights as a holder of outstanding shares of the Company’s common stock.

During 2014, the Company awarded 125,000 performance-based restricted shares to an executive officer that vest over a period of two years. As of December 31, 2016, the performance conditions have been met. Unvested performance awards partially vest on the first anniversary as defined in the executive’s employment agreement and the remainder on the second anniversary. The executive does not need to remain employed with the Company for the awards to vest. During 2015, the Company awarded 25,000 restricted shares to the same executive officer. The Company did not award any restricted stock during the year ended December 31, 2016.

Compensation expense for restricted stock awards is recognized over the requisite service period of two years. The Company recognizes share-based compensation on a graded or straight-line basis depending on the terms of the award. For the years ended December 31, 2016, 2015, and 2014, compensation expense was $40,000, $203,000, and $506,000, respectively.

As of December 31, 2016, there was no unrecognized compensation cost related to unvested restricted stock awards.

The following table summarizes the Company’s performance-based restricted stock activities for the year ended December 31, 2016 (in thousands, except Weighted Average Price per Share):

	Number of Shares	Weighted Average Price per Share
Prior year awards	35	$ 5.41

Awards granted in 2016		
Granted, at maximum	-	-
Vested	(18)	5.41
Forfeited	-	-
Total unvested at December 31, 2016	17	$ 5.41

Restricted Stock Units

Restricted stock units ("RSUs") awarded under the 2007 Plan entitle the shareholder the right to receive common stock or the value thereof in the future subject to restrictions imposed in connection with the award.

During the year ended December 31, 2016, the Company entered into agreements with several executive officers and employees whereby the Company may grant up to 267,000 RSUs based upon the achievement of certain performance-based goals at the discretion of our Compensation Committee. In order for these RSUs to be granted, the Company's annual revenue and adjusted earnings before interest, depreciation, amortization, and income tax expense ("Adjusted EBITDA") must exceed a minimum amount; depending upon the Company's actual annual revenue and Adjusted EBITDA, additional restricted stock may be earned up to a maximum amount. Upon achievement of the performance condition, the unvested performance awards will vest immediately.

Considerable judgment is required in assessing the estimated level of achievement of the performance goals. During the year ended December 31, 2016, the employment of three executive officers was terminated, and management adjusted its estimated level of achievement of the performance goals for all executive officers and employees. The Company recognized compensation benefit of $(173,000) for the year ended December 31, 2016. As of December 31, 2016, there are 60,000 performance-based RSUs remaining that may be granted if the performance conditions are achieved.

For the year ended December 31, 2015, compensation expense for RSUs was $261,000. There was no compensation expense for RSUs for the year ended December 31, 2014.

During the year ended December 31, 2016, the Company also granted an executive officer and an employee approximately 52,000 RSUs, which vested immediately. The total compensation expense recognized for these RSUs during this period was $159,000.

During the year ended December 31, 2016, the Company recognized compensation expense of $513,000 related to awards granted to the Board of Directors during the fourth quarter of 2015, of which 25% of the RSUs subject to the award vest each quarter such that all RSUs are vested by November 30, 2016.

During the year ended December 31, 2016, the Company granted approximately 90,000 RSUs to the Board of Directors in lieu of cash fees for the third and fourth quarters of 2016. The awards vest 50% on September 30, 2016, and 50% on December 31, 2016. For the year ended December 31, 2016, compensation expense was $168,000.

As of December 31, 2016, there was no unrecognized compensation cost related to restricted stock units.

The following table summarizes the Company’s restricted stock unit activities for the year ended December 31, 2016 (in thousands, except Weighted Average Price per Share):

	Number of Shares	Weighted Average Price per Share
Prior year awards	240	$ 3.85
Awards granted in 2016		
Granted, at maximum	230	2.61
Vested	(302)	3.05
Forfeited	(168)	3.58
Total unvested at December 31, 2016	-	$ -

Stockholder Rights Plan

In July 2007, the Company adopted a stockholder rights plan. The rights accompany each share of common stock of the Company and are evidenced by ownership of common stock. The rights are not exercisable except upon the occurrence of certain takeover-related events. Once triggered, the rights would entitle the stockholders, other than a person qualifying as an “Acquiring Person” pursuant to the rights plan, to purchase additional common stock at a 50% discount to their fair market value. The rights issued under the rights plan may be redeemed by the Board of Directors at a nominal redemption price of $0.001 per right, and the Board of Directors may amend the rights in any respect until the rights are triggered.

Amendment to Bylaws

On September 23, 2016, the Board of Directors approved the amended and restated bylaws of the Company (the "Amended and Restated Bylaws"), effective the same date. In order to preserve certain tax benefits of the Company, the Company's Amended and Restated Bylaws add Article VII, which imposes certain restrictions on the transfer of the Company's securities (the "Tax Benefit Preservation Provision"). The transfer restrictions apply until the earlier of (i) the repeal of Section 382 of the United States Internal Revenue Code of 1986 (the "IRC"), or any successor statute if the Board of Directors determines that the Tax Benefit Preservation Provision is no longer necessary to preserve the tax benefits of the Company; (ii) the beginning of a taxable year of the Company to which the Board of Directors determines that no tax benefits may be carried forward; or (iii) such other date as the Board of Directors shall fix in accordance with the Amended and Restated Bylaws. Until the expiration of the transfer restrictions, any attempted transfer of the Company's common stock shall be prohibited and void to the extent that, as a result of the transfer (or any series of transfers of which such transfer is a part), either (i) any person of group of persons would own 4.9% or more of the Company's Common Stock directly or indirectly, as deemed to constructively own or otherwise aggregated pursuant to Section 382 of the IRC; (ii) the ownership interest in the Company of any person of group of persons owning 4.9% or more of the Company's Common Stock would be increased; or (iii) any shareholder holding 5% or more of the total market value of the Company's securities transfers, or agrees to transfer, any securities of the Company; provided, however, that settlement of any transaction in the Company's securities entered into through the facilities of the New York Stock Exchange, Inc. are not precluded by (iii) above. Notwithstanding the foregoing, nothing in the Tax Benefit Preservation Provision shall prevent a person from transferring the Company's common stock to a new or existing "public group" of the Company, as defined in Treasury Regulation Section 1.382-2T(f)(13), and the transfer restrictions shall not apply to transfers that have been approved by the Board of Directors in accordance with the procedures set forth in the Amended and Restated Bylaws.

Note 9. Employee Benefit Plan

The Company has a defined contribution plan under Section 401(k) of the Internal Revenue Code covering all full-time employees, and providing for matching contributions by the Company, as defined in the plan. Participants in the plan may direct the investment of their personal accounts to a choice of mutual funds consisting of various portfolios of stocks, bonds or cash instruments. Contributions made by the Company to the plan for the years ended December 31, 2016, 2015, and 2014 were approximately $297,000, $317,000, and $394,000, respectively.

Note 10. Segment Information

Segment reporting requires the use of the management approach in determining the reportable operating segments. The management approach considers the internal organization and reporting used by our chief operating decision maker for making operating decisions and assessing performance. The Company's financial reporting includes detailed data on four separate reportable segments. The Company's four operating segments are: (1) Jewish Networks, which consists of JDate, JDate.co.uk, JDate.fr, JDate.co.il, Cupid.co.il, and JSwipe; (2) Christian Networks, which consists of ChristianMingle, CrossPaths, ChristianMingle.co.uk, ChristianMingle.com.au, Believe.com, ChristianCards.net, DailyBibleVerse.com and Faith.com; (3) Other Networks, which consists of Spark.com and related other general market websites as well as other properties which are primarily composed of sites targeted towards various religious, ethnic, geographic and special interest groups; and (4) Offline & Other Businesses, which consists of revenue generated from offline activities.

	Years Ended December 31,		
(in thousands)	2016	2015	2014
Revenue			
Jewish Networks	$14,081	$18,938	$23,245
Christian Networks	19,384	27,234	35,875
Other Networks	1,571	1,869	2,217
Offline and Other Businesses	55	94	308
Total Revenue	$35,091	$48,135	$61,645
Direct Marketing Expenses			
Jewish Networks	$1,605	$2,611	$3,120
Christian Networks	6,488	16,563	26,795
Other Networks	326	518	480
Offline and Other Businesses	-	-	76
Total Direct Marketing Expenses	8,419	19,692	30,471
Unallocated Operating Expenses	34,561	29,541	32,112
Operating Loss	$(7,889)	$(1,098)	$(938)

Due to the Company's integrated business structure, cost and expenses, other than direct marketing expenses, are not allocated to the individual reporting segments. As such, the Company does not measure operating profit or loss by segment for internal reporting purposes. Assets are not allocated to the different business segments for internal reporting purposes.

The Company operates several international websites; however, many of them are operated and managed by the Company's U.S. operations. Foreign revenue represents sales generated outside the U.S. where the Company has its principal operations. Revenue and identifiable long-lived assets (excluding deferred tax assets, goodwill and intangibles) by geographical area are as follows (in thousands):

	Years Ended December 31,		
	2016	2015	2014
Revenue			
United States	$33,431	$45,629	$58,296
Israel	1,660	2,506	3,349
Total Revenue	$35,091	$48,135	$61,645

	Years Ended December 31,	
	2016	2015
Long-Lived Assets		
United States	$4,352	$5,655
Israel	245	77
Total Long-Lived Assets	$4,597	$5,732

Note 11. Commitments and Contingencies

Operating Leases

The Company leases its office and data center facilities under operating lease agreements, providing for annual minimum lease payments as follows (in thousands):

Year Ending December 31,	
2017	$722
2018	514
Total	$1,236

On July 29, 2015, the Company entered into an office lease for its Israel location, which was set to expire on September 30, 2018. The Company terminated the office lease during the third quarter of 2016.

Rental expense under non-cancelable operating leases with scheduled rent increases or free rent is accounted for on a straight-line basis over the lease term. Leasehold improvement incentives are recorded as deferred credits and are amortized on a straight-line basis as a reduction of rent expense over the lease term.

The Company recognized rent expense under operating leases of $598,000, $612,000 and $898,000 for the years ended December 31, 2016, 2015 and 2014, respectively.

Other Commitments and Obligations

On August 9, 2016, the Company entered into a management services agreement (the “Management Services Agreement”) with PEAK6 Investments, L.P. See – Management Services Agreement.

The Company has other non-cancelable commitments and obligations consisting of contracts with software licensing, marketing service providers, and the Management Services Agreement. These commitments are payable as follows:

Year Ending December 31,	
2017	$1,775
2018	1,621
2019	1,000
Total	$4,396

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Contingent consideration related to the acquisition of Smooch Labs has been excluded from the above commitments, as management determined that the performance milestones would not likely be achieved and payment of the contingent earnout is remote as of December 31, 2016.

Legal Proceedings

California Unruh Act Litigation – Werner, et al. v. Spark Networks, Inc. and Spark Networks USA, LLC and Wright, et al. v. Spark Networks, Inc., Spark Networks USA, LLC, et al.

On July 19, 2013, Aaron Werner, on behalf of himself and all other similarly situated individuals, filed a putative Class Action Complaint (the “Werner Complaint”) in the Superior Court for the State of California, County of Los Angeles against Spark Networks, Inc. and Spark Networks USA, LLC (collectively “Spark Networks”). The Werner Complaint alleges that Spark Networks’ website ChristianMingle.com violates California’s Unruh Civil Rights Act (the “Unruh Act”) by allegedly discriminating on the basis of sexual orientation. The Werner Complaint requests the following relief: an injunction, statutory, general, compensatory, treble and punitive damages, attorneys’ fees and costs, pre-judgment interest, and an award for any other relief the Court deems just and appropriate. On December 23, 2013, Richard Wright, on behalf of himself and all other similarly situated individuals, filed a putative Class Action Complaint (the “Wright Complaint”) in the Superior Court for the State of California, County of San Francisco against Spark Networks, Inc. The Wright Complaint alleges that Spark Networks, Inc.’s commercial dating services including ChristianMingle.com, LDSSingles.com, CatholicMingle.com, BlackSingles.com, MilitarySinglesConnection.com and AdventistSinglesConnection.com violate the Unruh Act by allegedly intentionally and arbitrarily discriminating on the basis of sexual orientation. The Wright Complaint requests the following relief: a declaratory judgment, a preliminary and permanent injunction, statutory penalties, reasonable attorneys’ fees and costs, pre-judgment interest, and an award for any other relief the Court deems just and appropriate. A motion filed by Spark Networks to consolidate the two matters in Los Angeles Superior Court was granted. On February 25, 2016 the parties reached a settlement including the following terms: (1) individual settlement payments of $4,000 each in statutory damages and $5,000 each in service awards to plaintiffs Werner and Wright, and (2) $450,000 in attorneys’ fees and costs to compensate Werner and Wright’s counsel for their time and out-of-pocket expenses. On April 19, 2016, the plaintiffs’ counsel filed a motion for an order granting approval of the settlement. On June 27, 2016, the judge approved the settlement during the hearing on the Motion for Preliminary Approval of Class Action Settlement. All amounts have been paid as of December 31, 2016.

Israeli Consumer Actions Ben-Jacob vs. Spark Networks (Israel) Ltd. and Gever vs. Spark Networks (Israel) Ltd. and Korland vs. Spark Networks (Israel) Ltd.

Three class action law suits have been filed in Israel alleging inter alia violations of the Israel Consumer Protection Law of 1981. Spark Networks (Israel) Ltd. (“Spark Israel”) was served with a Statement of Claim and a Motion to Certify it as a Class Action in the Ben-Jacob action on January 14, 2014. The plaintiff alleges that Spark Israel refused to cancel her subscription and provide a refund for unused periods and claims that such a refusal is in violation of the Consumer Protection Law. Spark Israel was served with a Statement of Claim and a motion to Certify it as a Class Action in the Gever action on January 21, 2014. The plaintiff alleges that Spark Israel renewed his one month subscription without receiving his positive agreement in advance and claims that such renewal is prohibited under the Consumer Protection Law and its regulations. Spark Israel was served with a Statement of Claim and a Motion to Certify it as a Class Action in the Korland action on February 12, 2014. The plaintiff alleges that Spark Israel refused to give her a full refund and charged her the price of a one month subscription to the JDate website in violation of the Consumer Protection Law. In each of these three cases, the plaintiff is seeking personal damages and damages on behalf of a defined group. On May 8, 2014, the Court granted Spark Israel’s motion to consolidate all three cases. All three cases are now consolidated and will be litigated jointly. Spark Israel’s combined response to these motions to certify the class actions was filed November 1, 2014, and the plaintiffs responded to the combined response. The parties had a hearing before the judge on December 24, 2014. Following the hearing the judge ordered that the pleadings filed by the parties be transferred to the ICC so that the ICC can provide its position as to the parties' allegations within 90 days. The ICC issued its opinion on April 1, 2015. Following the filing of the ICC opinion, the parties filed briefs addressing the ICC opinion. On January 7, 2016, the parties advised the Court that they have agreed on the terms of a settlement agreement, and jointly moved to approve the agreement and give it the effect of a judgment. According to the terms of the settlement agreement, clients who bought a subscription to JDate.co.il on October 12, 2008 or later will be entitled to receive certain benefits. The settlement agreement, which provides for compensation and legal fees, will only come into effect if the court approves it. On January 14, 2016 the Court ordered the parties to publish the terms of the proposed settlement agreement. The Court allowed for the Attorney General or any person who wishes to object to the settlement or exclude himself from the class to file their position with the Court through March 10, 2016. On March 10, 2016, the Consumer Council filed an objection to the settlement agreement, arguing inter alia that the benefits offered to the clients are insufficient, and that the Company's new business model does not comply with certain legal requirements. The Company and the plaintiffs filed their responses on March 24, 2016. On April 14, 2016, the Attorney General notified the Court that it has no objection to the settlement agreement. On February 8, 2017, a hearing was held during which the judge asked questions about the settlement agreement. The Company and the plaintiffs filed a revised settlement agreement on February 18, 2017, for the judge's final approval. On February 28, 2017, the judge approved the settlement agreement, which provided for compensation and legal fees under terms from the original settlement agreement. The Company has recorded an accrual of $52,000 for the probable cost related to resolving this matter as of December 31, 2016.

Scottsdale Insurance Co. v. Spark Networks, Inc., et al.

On January 13, 2016, Scottsdale Insurance Company ("Scottsdale") filed a complaint for declaratory relief and reimbursement/unjust enrichment against Spark Networks, Inc. in the United States District Court for the Central District of California. In its complaint, Scottsdale alleges that, after the Company was sued in the Werner Complaint, the Company tendered its defense and indemnity to Scottsdale pursuant to the terms of the business and management indemnity insurance policy that Scottsdale had issued to the Company on November 1, 2012. The complaint alleges that, after receiving the demand, Scottsdale accepted the defense of the Company in the Werner Complaint under a reservation of rights, including Scottsdale's right to seek reimbursement of any amounts paid to defend against non-covered claims. The Company filed its answer and counterclaims against Scottsdale on March 7, 2016, seeking damages for Scottsdale's breach of policy and breach of the implied covenant of good faith and fair dealing. The parties executed a settlement agreement on July 6, 2016, whereby Scottsdale reimbursed the Company $238,000 for all reasonable and necessary attorney's fees and costs in defense against the Werner Complaint as of December 31, 2016.

City of Santa Monica, California – City Attorney General Investigation

On May 16, 2016, representatives from Spark Networks met with representatives from a cross-jurisdictional working group consisting of consumer fraud attorneys from the City of Santa Monica and offices of the District Attorney from the counties of Los Angeles, Santa Cruz, Santa Clara and San Diego ("Cross Jurisdictional Group"). This meeting was held at the request of the Cross Jurisdictional Group, as a "pre-filing" meeting to explain and potentially resolve issues over auto-renewal disclosures by the Spark Network websites. The Cross Jurisdictional Group alleges that the Spark Network websites violate California law on disclosure of auto-renewal terms and ability to cancel auto-renewal. They also claim that the Spark Networks websites violate California dating contract statues, which (where applicable) require a three day right to cancel. The Cross Jurisdictional Group sent a voluntary document request (not a subpoena) to the Company on June 2, 2016. The Company cooperated with the Cross Jurisdictional Group and provided information in response to the voluntary request. The Cross Jurisdictional Group has indicated that it would like the Company to change its disclosures in certain respects, and that it intends to seek the payment of a penalty in an unspecified amount. In response to these disclosure requests, the Company has made changes. On March 8, 2017, the Company received a settlement communication from the City of Santa Monica and offices of the District Attorney, proposing settlement terms including payment of civil penalties, restitution to consumers, investigative costs and legal fees ranging from $1.5 million to $2.2 million. The Company has not responded to the settlement communication and intends to vigorously defend against the claims by the City of Santa Monica. As of December 31, 2016, the Company is unable to reasonably estimate the possibility of an unfavorable outcome, or the amount of any liability that may result from this matter.

Banertek LLC vs. Spark Networks, Inc.

On August 1, 2016, Banertek LLC filed a complaint for patent infringement with a demand for jury trial against Spark Networks, Inc. The Company was served with the complaint and summons as of October 10, 2016. The parties executed a confidential settlement agreement on December 5, 2016.

Jedi Technologies, Inc. vs. Spark Networks, Inc., Spark Networks USA, LLC and Smooch Labs, Inc.

On November 15, 2016, Jedi Technologies, Inc. filed a complaint for patent infringement with a demand for jury trial against Spark Networks, Inc, Spark Networks USA, LLC and Smooch Labs, Inc. The Company was served with the complaint and summons as of November 21, 2016. The Company filed a motion to dismiss on January 12, 2017 in the District of Delaware, and received Jedi Technologies, Inc.'s opposition to the motion to dismiss. The Company filed its reply to the opposition on February 2, 2017. As of December 31, 2016, the Company is unable to reasonably estimate the possibility of an unfavorable outcome, or the amount of any liability that may result from this matter.

The Company intends to defend vigorously against each of the above lawsuits. At this time, management does not believe the above matters, either individually or in the aggregate, will have a material adverse effect on the Company's results of operations or financial condition and believes the recorded legal accruals as of December 31, 2016 are adequate in light of the probable and estimable liabilities. However, no assurance can be given that these matters will be resolved in the Company's favor.

The Company has additional existing legal claims and may encounter future legal claims in the normal course of business. In the Company's opinion, the resolutions of the existing legal claims are not expected to have a material impact on our financial position or results of operations.

Note 12. Related Party Transactions

MLLNNL, LLC

The Company has multiple, on-going engagements with MLLNNL, LLC ("Mllnnl"), a marketing agency that employs, and was co-founded by, an employee of the Company's wholly-owned subsidiary, Smooch Labs. In June 2016, the Company engaged Mllnnl to provide marketing consultation services. For the year ended December 31, 2016, the Company has expensed $429,000 for services performed by Mllnnl. There were no related party transactions with Mllnnl during the twelve months ended December 31, 2015.

PEAK6 Investments, L.P.

Purchase Agreement and Warrant

On August 9, 2016, the Company issued and sold to PEAK6 Investments, L.P. (“PEAK6”) an aggregate of 5,000,000 shares of common stock of the Company at a purchase price of $1.55 per share pursuant to the terms of a purchase agreement dated as of August 9, 2016 (the “Purchase Agreement”), for an aggregate purchase price of $7.8 million. The Company also issued a warrant to PEAK6 to purchase up to 7,500,000 shares of common stock of the Company at an exercise price of $1.74 per share pursuant to the terms of a warrant agreement (the “Warrant Agreement”) dated as of August 9, 2016. One-half of the shares subject to the warrant vest when the closing price of the Company’s common stock on the New York Stock Exchange equals or exceeds $2.50 per share for 15 trading days during a 30-trading day period and the remaining one-half of the shares subject to the warrant vest when the closing price of the Company’s common stock equals or exceeds $3.50 per share for 15 trading days during a 30-trading day period. The exercise period of the warrant commences on February 8, 2017 and has a five-year term from the date of the agreement. The vesting of the shares subject to the warrant is also subject to partial or full acceleration in connection with certain corporate reorganizations pursuant to the terms of the Warrant Agreement. The Warrant Agreement provides that PEAK6 shall not have the right to exercise the warrant to the extent that PEAK6 would beneficially own in excess of 29.99% of the number of shares of common stock outstanding of the Company. If this restriction results in PEAK6 being unable to exercise the warrant at the end of the five-year term, the warrant term shall be extended one year. Subsequent to the stock purchase and as of December 31, 2016, PEAK6 holds a 15.6% ownership of the Company.

Management assessed whether the issuance of warrants represents a liability or equity instrument, and has determined that the warrants issued to PEAK6 are linked to equity instruments that are deemed to be indexed to the Company’s own stock. As such, the Company classified the warrant as equity at its fair value at the time of issuance and reassesses the equity classification at each balance sheet date. At December 31, 2016, management concluded that the equity classification remains appropriate for the warrant, as there have been no amendments or modifications to the terms of the warrant since the effective date of the Warrant Agreement.

Management has determined the fair value of the warrant as of the grant date using a Monte Carlo simulation model. The Monte Carlo simulation model utilizes multiple input variables to estimate the probability that market conditions will be achieved. The input variables include stock price volatility and risk-free interest rate to estimate the probability of satisfying the market conditions and the resulting fair value of the award. The warrant’s fair value of $3.3 million is included in additional paid-in capital, and the residual proceeds from the Purchase Agreement have been allocated to the shares of common stock of the Company issued to PEAK6.

In connection with the issuance of the shares of common stock and warrant to PEAK6, on August 9, 2016, the Company entered into Amendment No. 1 to the Company’s Rights Plan (the “Rights Plan Amendment”) with Computershare, Inc. in order to exempt the issuances of such shares and warrant (including the shares issuable upon exercise of the warrant) from the operation of the Company’s Rights Plan.

In connection with the Purchase Agreement, Daniel Rosenthal was appointed the Company’s Chief Executive Officer and David Budworth was appointed the Company’s Chief Technology Officer, each effective as of August 11, 2016. Daniel Rosenthal and Brad Goldberg were also appointed to the Company’s Board of Directors as PEAK6’s director designees pursuant to the Purchase Agreement, effective as of August 10, 2016. Mr. Goldberg was also appointed as a member of the nominating committee and compensation committee of the Board of Directors, effective as of August 10, 2016. Mr. Goldberg currently serves as the President of PEAK6, and Mr. Rosenthal and Mr. Budworth are both partners at PEAK6. Mr. Rosenthal and Mr. Budworth’s compensation for their services to the Company totaling $700,000 annually is included within general and administrative and technical operations expenses in the Consolidated Statements of Operations and Comprehensive Loss.

Management Services Agreement

In connection with the execution of the Purchase Agreement, the Company entered into a Management Services Agreement dated as of August 9, 2016 with PEAK6, pursuant to which PEAK6 will provide certain marketing, technology, strategy, development and other services to the Company over a five-year term, for a cash fee of $1.5 million per year (the “Management Fee”), which will be paid on a quarterly basis in an amount of $375,000 per quarter. The Management Fee excludes reimbursement of marketing costs as described below, which are costs in addition to the Management Fee.

At its discretion, PEAK6 may invoice each quarter for an amount different than the contractual amount, however, the amounts cannot exceed the contractual amount of $375,000 per quarter, other than for marketing costs as described below. If the quarterly invoice is for an amount less than the contractual amount, PEAK6 does not have the right to bill any additional fees in any future period, as the amounts invoiced represent the full amount due for the services provided by PEAK6 to the Company for each specific quarter.

During the year ended December 31, 2016, PEAK6 invoiced the Company a Management Fee of $560,000, representing the full amount due for services expected to be provided through the period ended February 28, 2017, excluding marketing costs as described below. The Management Fee may increase up to the contractual amount in future periods. The Management Fee expense is included within technical operations, development, and general and administrative expenses in the Consolidated Statements of Operations and Comprehensive Loss. For the year ended December 31, 2016, Management Fee expense to PEAK6 was $393,000. The prepaid expenses balance related to the Management Fee was $167,000 at December 31, 2016.

In addition, in the event that PEAK6 partners or employees are engaged to provide marketing or marketing related services to the Company either as replacement of Company employees or other external marketing resources engaged by the Company or as if they were Company employees, then the Company will reimburse PEAK6 for the actual costs incurred by such PEAK6 partners or employees. The amount to be reimbursed in any year by the Company for such marketing or marketing related services shall not exceed the lesser of “Saved Company Marketing Costs” or $1.8 million. “Saved Company Marketing Costs” is defined as the aggregate amount of fully burdened costs to the Company of the sales and marketing employees and external marketing resources (consulting or otherwise) that provided marketing or similar services to the Company that are replaced or reduced by the Company or PEAK6 partners or employees. The amounts reimbursed to PEAK6 for marketing and marketing related services are included as sales and marketing expense in the Consolidated Statements of Operations and Comprehensive Loss. For the year ended December 31, 2016, the Company has expensed $259,000 for sales and marketing services performed by PEAK6.

The Management Services Agreement may be terminated by the Company at its convenience upon at least 60 days’ prior written notice at any time after August 9, 2019, and may be terminated for cause at any time by PEAK6 or the Company upon the occurrence of certain events as set forth in the Management Services Agreement. Upon termination for convenience, the Company shall pay PEAK6 any unpaid quarterly payments that are due on or before the termination date and amounts due for certain costs and expenses incurred in connection with the Management Services Agreement. Upon termination for “cause” by PEAK6, the Company shall pay PEAK6 any unpaid quarterly payments that are due on or before the termination date, all Management Fees that would have been paid by the Company to PEAK6 in the first three years of the agreement less amounts actually paid, and the Warrant shall vest immediately without regard to any vesting conditions. Upon termination for cause by the Company, PEAK6 shall pay the Company an amount equal to the aggregate amount of all Management Fees paid by the Company during the term of the management Services Agreement.

Lloyd I. Miller, III

On August 22, 2016, the Company issued and sold to certain affiliates of Lloyd I. Miller, III (“Lloyd Miller”) an aggregate of 840,031 shares of common stock of the Company at a purchase price of $1.55 per share, for an aggregate purchase price of approximately $1.3 million. Lloyd Miller is a holder of more than 10% of the Company’s outstanding shares of capital stock.

There were no related party transactions during the twelve months ended December 31, 2015.

Note 13. Quarterly Results of Operations (unaudited)

The following tables present the Company's quarterly results of operations and should be read in conjunction with the consolidated financial statements and related notes. The Company has prepared the unaudited information on substantially the same basis as our audited consolidated financial statements which, in the opinion of management, includes all adjustments, consisting only of normal recurring adjustments, except as otherwise indicated, necessary for the presentation of the results of operations for such periods. Operating results for any quarter are not necessarily indicative of results for any future quarters or for a full year.

	Three Months Ended							
(in thousands, except per share amounts)	Dec. 31, 2016	Sept. 30, 2016	June 30, 2016	March 31, 2016	Dec. 31, 2015	Sept. 30, 2015	June 30, 2015	March 31, 2015
Consolidated Statement of Operations Data:								
Revenue	$7,743	$8,391	$9,098	$9,859	$10,705	$11,682	$12,262	$13,486
Cost of revenue (exclusive of depreciation shown separately below)	1,647	2,323	2,653	6,229	5,017	5,593	6,368	7,097
Sales and marketing	854	1,103	1,380	1,452	1,242	1,144	996	755
Customer service	545	523	840	993	826	769	721	749
Technical operations	350	419	305	297	388	210	214	212
Development	748	962	1,180	1,030	1,059	1,053	1,008	917
General and administrative	2,038	2,438	2,004	2,511	2,675	2,933	2,533	2,238
Depreciation	1,038	738	746	712	604	562	532	513
Amortization of intangible assets	69	68	78	78	78	10	10	10
Impairment of intangible and long-lived assets	4,480	58	52	39	65	26	37	69
Total cost and expenses	11,769	8,632	9,238	13,341	11,954	12,300	12,419	12,560
Operating (loss) income	(4,026)	(241)	(140)	(3,482)	(1,249)	(618)	(157)	926
Interest expense (income) and other, net	138	(82)	114	(141)	16	191	(229)	118
Income (loss) before (benefit) provision for income taxes	(4,164)	(159)	(254)	(3,341)	(1,265)	(809)	72	808
Income tax (benefit) provision	(447)	(65)	(583)	67	(23)	13	168	85
Net (loss) income	$(3,717)	$(94)	$329	$(3,408)	$(1,242)	$(822)	$(96)	$723
Basic and diluted net income (loss) per share	$(0.12)	$(0.00)	$0.01	$(0.13)	$(0.05)	$(0.03)	$(0.00)	$0.03
Shares used in computation of basic net income (loss) per share	31,895	29,212	25,908	25,846	25,675	25,188	25,100	24,654
Shares used in computation of diluted net income (loss) per share	31,895	29,212	25,975	25,846	25,675	25,188	25,100	24,942