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METRETEK TECHNOLOGIES INC

Form S-8

June 14, 2004

As filed with the Securities and Exchange Commission on June 14, 2004

Registration No. 333-_____

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C., 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

METRETEK TECHNOLOGIES, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

Delaware

84-1169358

(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION)

(I.R.S. EMPLOYER
IDENTIFICATION NO.)

303 East 17th Avenue
Suite 660
Denver, Colorado 80203

(ADDRESS AND ZIP CODE OF PRINCIPAL EXECUTIVE OFFICES)

Metretek Technologies, Inc. 1998 Stock Incentive Plan

(FULL TITLE OF THE PLAN)

A. Bradley Gabbard, Executive Vice President
Metretek Technologies, Inc.
303 East 17th Avenue, Suite 660
Denver, Colorado 80203
(303) 785-8080

(NAME, ADDRESS AND TELEPHONE NUMBER, INCLUDING AREA CODE, OF AGENT FOR SERVICE)

Copies to:
Paul R. Hess, Esq.
Kegler, Brown, Hill & Ritter Co., L.P.A.
65 East State Street, Suite 1800
Columbus, Ohio 43215
(614) 462-5400

CALCULATION OF REGISTRATION FEE

TITLE OF AMOUNT PROPOSED MAXIMUM PROPOSED MAXIMUM AMOUNT

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| SECURITIES TO BE REGISTERED | TO BE REGISTERED | OFFERING PRICE PER SHARE | AGGREGATE OFFERING PRICE | |
|--|---------------------|--------------------------|--------------------------|----|
| Common Stock, par value \$.01 per share(1)(2) | 1,000,000 shares(2) | \$ 2.95 (3) | \$ 2,950,000.00 (3) | \$ |

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, this Registration Statement also registers such indeterminate number of additional shares of Common Stock and other securities that may be offered or issued under the Metretek Technologies, Inc. 1998 Stock Incentive Plan in connection with stock splits, stock dividends and similar transactions pursuant to the anti-dilution provisions of the Plan.
- (2) Includes the related Preferred Share Purchase Rights to purchase shares of Series C Preferred Stock, par value \$.01 per share, of Metretek Technologies, Inc. No separate consideration will be received for the Preferred Share Purchase Rights which, prior to the occurrence of certain prescribed events, are not exercisable, are evidenced by the certificates for Common Stock and are transferable only with the Common Stock. The value, if any, of the Preferred Share Purchase Rights is reflected in the market price of the Common Stock.
- (3) Estimated solely for the purpose of computing the amount of the registration fee pursuant to paragraphs (c) and (h)(1) of Rule 457 under the Securities Act, upon the basis of the average of the high and low prices of the Common Stock as reported on the OTC Bulletin Board on June 9, 2004.

REGISTRATION OF ADDITIONAL SHARES
PURSUANT TO
GENERAL INSTRUCTION E

Metretek Technologies, Inc., a Delaware corporation (the "Registrant"), is filing this Registration Statement on Form S-8 to register the issuance of up to an additional 1,000,000 shares of Common Stock, par value \$.01 per share, of the Registrant ("Common Stock") pursuant to the Metretek Technologies, Inc. 1998 Stock Incentive Plan (the "Plan") in accordance with General Instruction E to Form S-8. On June 12, 1998, the Registrant filed a Registration Statement on Form S-8 (File No. 333-56697) registering the issuance of 250,000 (as adjusted for a 1-for-4 reverse split of the Common Stock effected on July 6, 1998) shares of Common Stock pursuant to Plan. On March 10, 2000, the Registrant filed a Registration Statement on Form S-8 (File No. 333-32118) registering the issuance of an additional 500,000 shares of Common Stock pursuant to the Plan. On June 11, 2001, the Registrant filed a Registration Statement on Form S-8 (File No. 333-62714) registering the issuance of an additional 1,000,000 shares of Common Stock pursuant to the Plan. The securities registered under this Registration Statement are of the same class as other securities for which the aforementioned Registration Statements on Form S-8 relating to the same employee benefit plan are effective. Pursuant to General Instruction E of Form S-8, the contents of the aforementioned previously filed Registration Statements on Form S-8 are incorporated by reference into this Registration Statement.

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INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 8. EXHIBITS.

| Exhibit No. | Description of Exhibit |
|-------------|--|
| 4.1 | Second Restated Certificate of Incorporation of Metretek Technologies, Inc. (Incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-3, Registration No. 333-96369). |
| 4.2 | Amended and Restated By-Laws of Metretek Technologies, Inc. (Incorporated by reference to Exhibit 4.2 to Registrant's Registration Statement on Form S-8, Registration No. 333-62714.) |
| 4.3 | Metretek Technologies, Inc. 1998 Stock Incentive Plan, amended and restated as of June 14, 2004* |
| 5.1 | Opinion of Kegler, Brown, Hill & Ritter Co., L.P.A.* |
| 23.1 | Consent of Deloitte & Touche LLP* |
| 23.2 | Consent of Kegler, Brown, Hill & Ritter Co., L.P.A. (Included in Exhibit 5.1) |
| 24.1 | Powers of Attorney (Included in Signature Page of this Registration Statement) |

*Filed herewith.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Denver, State of Colorado, on June 14, 2004.

METRETEK TECHNOLOGIES, INC.

By: /s/ W. Phillip Marcum

W. Phillip Marcum, President and
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT each person whose signature appears below hereby constitutes and appoints W. Phillip Marcum, A. Bradley Gabbard and Paul R. Hess, and each of them, with full power to act without the joinder of others, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and

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every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

| Signature ----- | Title ----- |
|---|---|
| /s/ W. Phillip Marcum ----- W. Phillip Marcum | President, Chief Executive Officer and Director (Principal Executive Officer) |
| /s/ A. Bradley Gabbard ----- A. Bradley Gabbard | Executive Vice President, Chief Financial Officer, Treasurer and Director (Principal Financial Officer) |
| /s/ Gary J. Zuiderveen ----- Gary J. Zuiderveen | Principal Accounting Officer, Controller and Secretary (Principal Accounting Officer) |
| /s/ Basil M. Briggs ----- Basil M. Briggs | Director |
| /s/ Anthony D. Pell ----- Anthony D. Pell | Director |
| /s/ Kevin P. Collins ----- Kevin P. Collins | Director |

METRETEK TECHNOLOGIES, INC.
1998 STOCK INCENTIVE PLAN
AMENDED AND RESTATED AS OF JUNE 14, 2004
FORM S-8

EXHIBIT INDEX

| Exhibit No. ----- | Description of Exhibit ----- |
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- 4.2 Amended and Restated By-Laws of Metrotek Technologies, Inc.
(Incorporated by reference to Exhibit 4.2 to Registrant's
Registration Statement on Form S-8, Registration No. 333-62714.)
- 4.3 Metrotek Technologies, Inc. 1998 Stock Incentive Plan, amended
and restated as of June 14, 2004*
- 5.1 Opinion of Kegler, Brown, Hill & Ritter Co., L.P.A.*
- 23.1 Consent of Deloitte & Touche LLP*
- 23.2 Consent of Kegler, Brown, Hill & Ritter Co., L.P.A. (Included in
Exhibit 5.1)
- 24.1 Powers of Attorney (Included in Signature Page of this
Registration Statement)

*Filed herewith.