

SMITH MICRO SOFTWARE INC

Form S-3

April 04, 2018

As filed with the Securities and Exchange Commission on April 4, 2018

Registration No. 333-

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Smith Micro Software, Inc.

(Exact name of registrant as specified in its charter)

Delaware 33-0029027  
(State or other jurisdiction of (I.R.S. employer

incorporation or organization) identification number)

51 Columbia

Aliso Viejo, CA 92656

(949) 362-5800

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

William W. Smith, Jr.

Chief Executive Officer

Smith Micro Software, Inc.

51 Columbia

Aliso Viejo, CA 92656

(949) 362-5800

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a nonaccelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer

Accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

#### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered <sup>(1)</sup>	Proposed Maximum Aggregate Offering Price Per Share <sup>(2)</sup>	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value per share (3)	2,857,144	\$1.59	\$4,542,859	\$566
Common Stock, \$0.001 par value per share (4)	2,942,858	\$1.59	\$4,679,144	\$582
Common Stock, \$0.001 par value per share (5)	1,201,760	\$1.59	\$1,910,798	\$238
Common Stock, \$0.001 par value per share (6)	103,850	\$1.59	\$165,122	\$21
Total	7,105,612	\$1.59	\$11,297,923	\$1,407

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), the securities being registered hereunder include such indeterminate number of additional shares of common stock as may be issuable as a result of stock splits, stock dividends, recapitalizations, anti-dilution adjustments or similar transactions, including such anti-dilution adjustments as contained in the warrants.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act, based on the average high and low prices as reported on the NASDAQ Capital Market on March 28, 2018.

(3) Represents shares of common stock offered by the selling stockholders.

(4) Represents shares of common stock issuable upon exercise of outstanding warrants to purchase shares of common stock issued in March of 2018, offered by certain of the selling stockholders.

- (5) Represents shares of common stock issuable upon conversion of the Series B 10% Convertible Preferred Stock of the Issuer offered by certain of the selling stockholders.
- (6) Represents shares of common stock issuable upon exercise of outstanding warrants to purchase shares of common stock issued in May of 2017, offered by certain of the selling stockholders.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. The selling stockholders may not sell these securities under this prospectus until the registration statement of which it is a part and filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS, SUBJECT TO COMPLETION, DATED APRIL 4, 2018

7,105,612 Shares of Common Stock

This prospectus relates to the resale or other disposition from time to time of up to 7,105,612 shares of common stock of Smith Micro Software, Inc. by the selling stockholders identified herein, including 2,857,144 shares of our common stock, 1,201,760 shares of common stock issuable upon conversion of our Series B 10% Convertible Preferred Stock and 3,046,708 shares of common stock issuable upon exercise of outstanding warrants, in each case, which were issued to the selling stockholders in private placement transactions.

The selling stockholders identified in this prospectus, or their respective pledgees, donees, transferees or other successors-in-interest, may offer the shares from time to time through public or private transactions at prevailing market prices, at prices related to prevailing market prices or at privately negotiated prices as set forth under “Plan of Distribution.”

We will not receive any of the proceeds from the sale of common stock by the selling stockholders. We will pay the expenses of registering these shares. We will, however, receive the net proceeds of any warrants exercised for cash.

Our common stock is listed on the NASDAQ Capital Market under the symbol “SMSI.” On April 2, 2018, the last reported sale price of our common stock on the NASDAQ Capital Market was \$1.82.

**INVESTING IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. YOU SHOULD CAREFULLY CONSIDER THE RISK FACTORS BEGINNING ON PAGE 10 OF THIS PROSPECTUS BEFORE PURCHASING ANY OF THE SHARES OFFERED BY THIS PROSPECTUS.**

We may amend or supplement this prospectus from time to time by filing amendments or supplements as required. You should read the entire prospectus and any amendments or supplements carefully before you make your investment decision.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is \_\_\_\_\_, 2018



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You may only rely on the information contained in this prospectus or incorporated herein by reference. We have not authorized anyone to provide you with information that differs from what is contained or incorporated by reference in this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities other than the common stock offered by this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any common stock in any circumstances in which such offer or solicitation is unlawful. Neither the delivery of this prospectus nor any sale made in connection with this prospectus shall, under any circumstances, create any implication that there has been no change in our affairs since the date of this prospectus or that the information contained by reference to this prospectus is correct as of any time after its date.





## PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. However, it may not contain all of the information that is important to you. You should carefully read the entire prospectus, particularly the risks of investing in our securities discussed under “Risk Factors” and including the documents incorporated by reference before deciding to invest in our common stock. The terms “Smith Micro,” “the Company,” “we,” “us,” or “our” in this prospectus refer to Smith Micro Software, Inc. and its wholly-owned subsidiaries, unless the context suggests otherwise.

## FORWARD-LOOKING STATEMENTS

This prospectus, including the documents that we incorporate by reference, include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We have based these forward-looking statements on our current expectations and projections about future events. These forward-looking statements are subject to known and unknown risks, uncertainties and assumptions about us and our subsidiaries that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by such forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “could,” “would,” “expect,” “plan,” “anticipate,” “believe,” “continue,” “estimate,” “project,” “intend,” or the negative of such terms or other similar expressions. For example, statements concerning financial condition, possible or assumed future results of operations, growth opportunities, industry developments, plans and objectives of management, markets for our common stock and future management and organizational structure are all forward-looking statements. Forward-looking statements are not guarantees of performance. They involve known and unknown risks, uncertainties and assumptions that may cause actual results, levels of activity, performance or achievements to differ materially from any results, levels of activity, performance or achievements expressed or implied by any forward-looking statement. You should not place undue reliance on these forward-looking statements, which speak only as of the date made. We undertake no obligation to publicly release the result of any revision of these forward-looking statements to reflect events or circumstances after the date they are made or to reflect the occurrence of unanticipated events. Many of these risks and uncertainties are set forth in the “Risk Factors” section of this prospectus and in our other filings with the Securities and Exchange Commission (the “Commission”). Should any of these factors or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may differ materially from those included within the forward-looking statements. Such factors include, but are not limited to, the following:

- our ability to remain a going concern;
- our ability to raise additional capital to fund our operations and the risk of such capital not being available to us at commercially reasonable terms or at all;
- our customer concentration given that the majority of our sales currently depend on a few large client relationships, including Sprint;
- our ability to become and remain profitable;
- the difficulty of predicting our quarterly revenues and operating results and the chance of such revenues and results falling below analyst or investor expectations, which could cause the price of our common stock to fall;
- rapid technological evolution and resulting changes in demand for our products from our key customers and their end users;

- intense competition in our industry and our ability to successfully compete;
- the pace at which the markets for new products develop;
- our ability to hire and retain key personnel;
- the availability of third party intellectual property and licenses needed for our operations on commercially reasonable terms, or at all;
- our ability to establish and maintain strategic relationships with our customers and mobile device manufacturers;
  - our ability to assimilate acquisitions without diverting management attention and impacting current operations;
- the existence of undetected software defects in our products;
- the impact of U.S. regulations on our business and industry;
- our ability to protect our intellectual property and our ability to operate our business without infringing on the rights of others;
- the risks inherent with international operations;
- the possibility of security and privacy breaches in our systems damaging client relations and inhibiting our ability to grow;
- interruptions or delays in the services we provide from our data center hosting facilities that could harm our business;
- the risk of being delisted from NASDAQ if we fail to meet any of its applicable listing requirements;
- potential tax liabilities and other factors that may impact our effective tax rates;
  - the impact of evolving information security and data privacy laws on our business and industry; and
- those additional factors which are listed under the caption “Risk Factors” beginning on page 10 of this prospectus.

You should read this prospectus and the documents that we reference herein and therein and have filed as exhibits to the registration statement, of which this prospectus is part, completely and with the understanding that our actual future results may be materially different from what we concurrently expect. You should assume that the information appearing in this prospectus and any document incorporated herein by reference is accurate as of its date only. Because the risk factors referred to above could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us or on our behalf, you should not place undue reliance on any forward-looking statements. Further, any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. We qualify all of the information

presented in this prospectus and any document incorporated herein by reference, and particularly our forward-looking statements, by these cautionary statements.

## OUR COMPANY

Smith Micro Software, Inc. (“Smith Micro”) develops software to simplify and enhance the mobile experience, providing solutions to leading wireless service providers, device manufacturers, and wireless users around the world. From optimizing wireless networks to uncovering customer experience insights, and from providing visual access to wireless voicemail to ensuring family safety, our solutions enrich connected lifestyles while creating new opportunities to engage consumers via smartphones. We also provide a services platform for the Internet of Things (“IoT”) that enables comprehensive device management and firmware over-the-air (“FOTA”) updates for various types of connected devices. In addition, Smith Micro’s portfolio includes a wide range of products for creating, sharing, and monetizing rich content, such as visual messaging and 2D/3D graphics applications. With this as a focus, it is Smith Micro’s mission to help our customers thrive in a connected world.

For more than three decades, Smith Micro has developed deep expertise in embedded software for mobile devices, policy-based management platforms, and highly-scalable client and server applications. Tier 1 mobile network operators, cable providers, original equipment manufacturers (“OEMs”)/device manufacturers, and enterprise businesses across a wide range of industries use our software to capitalize on the growth of connected consumers, mobile apps, vehicle telematics, and smart cities.

In general, we help our customers:

- Provide valuable digital lifestyle services, such as family location services, parental controls, and device security, to mobile consumers;
- Manage mobile devices over-the-air for maximum performance, efficiency, reliability and cost-effectiveness;
- Provide easy visual access to wirelessly delivered voicemail messages, while also providing easy conversion of voice messages to text messages;
- Optimize wireless networks, reduce operational costs, and deliver “best-connected” user experiences;
- Efficiently and securely manage connected devices comprising the IoT;
- Design and create 2D and 3D digital illustrations, animation and figure design with easy-to-use, professional-grade graphics software.

We continue to innovate and evolve our business to take advantage of industry trends and opportunities in emerging markets, such as digital lifestyle services and online safety, “Big Data” analytics, automotive telematics, and the industrial IoT. The key to our longevity, however, is not simply technological innovation, but a never-ending focus on customer value.

During fiscal year 2017, we made several important steps toward profitability. We completed a major restructuring of our business to bring expenses in-line with current revenues, decreasing expenses by approximately \$3.5 million per quarter. Our new Chief Financial Officer, Timothy C. Huffmyer, brought an extensive background of financial planning and analysis, public-company experience in the technology sector, as well as mergers and acquisition experience to Smith Micro’s management team. Smith Micro ended 2017 on a strong note with the launch of its flagship product, SafePath® Family, with Sprint, the first Tier 1, U.S.-based mobile network operator (“MNO”) to roll out the service.

The Company was incorporated in California in November 1983, and reincorporated in Delaware in June 1995. Our principal executive offices are located at 51 Columbia, Aliso Viejo, California 92656. Our telephone number is (949) 362-5800. Our website address is [www.smithmicro.com](http://www.smithmicro.com), and we make our filings with the U.S. Securities and Exchange Commission (the "SEC") available on the Investor Relations page of our website. Information contained on our website does not constitute a part of this Report. Our common stock is traded on the NASDAQ under the symbol SMSI.

#### Business Segments