

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2021

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-37893

**FLUENT, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

77-0688094  
(I.R.S. Employer  
Identification No.)

300 Vesey Street, 9th Floor  
New York, New York 10282  
(Address of principal executive offices) (Zip Code)

(646) 669-7272  
(Registrant's telephone number, including area code)

Not Applicable  
(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0005 par value per share	FLNT	The NASDAQ Stock Market, LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 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  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).  Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): Yes  No

As of August 5, 2021, the registrant had 78,386,466 shares of common stock outstanding.



FLUENT, INC.

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## PART I - FINANCIAL INFORMATION

Unless otherwise indicated or required by the context, all references in this Quarterly Report on Form 10-Q to "we," "us," "our," "Fluent," or the "Company," refer to Fluent, Inc. and its consolidated subsidiaries.

## ITEM 1. FINANCIAL STATEMENTS.

**FLUENT, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(Amounts in thousands, except share and per share data)  
(unaudited)

	June 30, 2021	December 31, 2020
<b>ASSETS:</b>		
Cash and cash equivalents	\$ 25,139	\$ 21,087
Accounts receivable, net of allowance for doubtful accounts of \$326 and \$368, respectively	65,905	62,669
Prepaid expenses and other current assets	1,672	2,435
<b>Total current assets</b>	<b>92,716</b>	<b>86,191</b>
Restricted cash	1,480	1,480
Property and equipment, net	1,831	2,201
Operating lease right-of-use assets	7,460	8,284
Intangible assets, net	40,478	45,417
Goodwill	165,088	165,088
Other non-current assets	1,817	1,559
<b>Total assets</b>	<b>\$ 310,870</b>	<b>\$ 310,220</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY:</b>		
Accounts payable	\$ 16,364	\$ 7,692
Accrued expenses and other current liabilities	22,223	31,568
Deferred revenue	1,222	1,373
Current portion of long-term debt	6,250	7,293
Current portion of operating lease liability	2,261	2,291
<b>Total current liabilities</b>	<b>48,320</b>	<b>50,217</b>
Long-term debt, net	42,683	33,283
Operating lease liability	6,405	7,290
Other non-current liabilities	5,108	2,545
<b>Total liabilities</b>	<b>102,516</b>	<b>93,335</b>
Contingencies (see Note 10)		
<b>Shareholders' equity:</b>		
Preferred stock — \$0.0001 par value, 10,000,000 Shares authorized; Shares outstanding — 0 shares for both periods	—	—
Common stock — \$0.0005 par value, 200,000,000 Shares authorized; Shares issued — 82,440,259 and 80,295,141, respectively; and Shares outstanding — 78,371,427 and 76,349,274, respectively	41	40
Treasury stock, at cost — 4,068,832 and 3,945,867 shares, respectively	(10,666)	(9,999)
Additional paid-in capital	415,325	411,753
Accumulated deficit	(196,346)	(184,909)
<b>Total shareholders' equity</b>	<b>208,354</b>	<b>216,885</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 310,870</b>	<b>\$ 310,220</b>

See notes to consolidated financial statements

**FLUENT, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Amounts in thousands, except share and per share data)  
(unaudited)

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
<b>Revenue</b>	\$ 73,378	\$ 71,509	\$ 143,548	\$ 150,443
<b>Costs and expenses:</b>				
Cost of revenue (exclusive of depreciation and amortization)	56,605	49,007	107,595	105,631
Sales and marketing	3,000	2,888	5,961	5,718
Product development	3,433	3,115	6,867	5,846
General and administrative	11,527	10,044	23,226	21,120
Depreciation and amortization	3,366	3,853	6,739	7,586
Goodwill impairment and write-off of intangible assets	199	817	199	817
<b>Total costs and expenses</b>	<u>78,130</u>	<u>69,724</u>	<u>150,587</u>	<u>146,718</u>
<b>(Loss) income from operations</b>	(4,752)	1,785	(7,039)	3,725
Interest expense, net	(427)	(1,333)	(1,435)	(2,865)
Loss on early extinguishment of debt	—	—	(2,964)	—
<b>(Loss) income before income taxes</b>	(5,179)	452	(11,438)	860
Income tax benefit	—	—	1	—
<b>Net (loss) income</b>	<u>\$ (5,179)</u>	<u>\$ 452</u>	<u>\$ (11,437)</u>	<u>\$ 860</u>
<b>Basic and diluted (loss) income per share:</b>				
Basic	\$ (0.06)	\$ 0.01	\$ (0.14)	\$ 0.01
Diluted	\$ (0.06)	\$ 0.01	\$ (0.14)	\$ 0.01
<b>Weighted average number of shares outstanding:</b>				
Basic	79,962,275	78,510,383	79,560,643	78,557,331
Diluted	79,962,275	78,666,776	79,560,643	78,905,792

See notes to consolidated financial statements

**FLUENT, INC.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY**  
(Amounts in thousands, except share data)  
(unaudited)

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total shareholders' equity
	Shares	Amount	Shares	Amount			
<b>Balance at March 31, 2021</b>	82,228,823	\$ 41	4,055,011	\$ (10,623)	\$ 413,958	\$ (191,167)	\$ 212,209
Vesting of restricted stock units and issuance of stock under incentive plans	211,436	—	—	—	136	—	136
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	13,821	(43)	—	—	(43)
Exercise of stock options	—	—	—	—	—	—	—
Share-based compensation	—	—	—	—	1,231	—	1,231
Net loss	—	—	—	—	—	(5,179)	(5,179)
<b>Balance at June 30, 2021</b>	<u>82,440,259</u>	<u>\$ 41</u>	<u>4,068,832</u>	<u>\$ (10,666)</u>	<u>\$ 415,325</u>	<u>\$ (196,346)</u>	<u>\$ 208,354</u>
<b>Balance at December 31, 2020</b>	80,295,141	\$ 40	3,945,867	\$ (9,999)	\$ 411,753	\$ (184,909)	\$ 216,885
Vesting of restricted stock units and issuance of stock under incentive plans	1,947,118	1	—	—	135	—	136
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	122,965	(667)	—	—	(667)
Exercise of stock options	198,000	—	—	—	934	—	934
Share-based compensation	—	—	—	—	2,503	—	2,503
Net loss	—	—	—	—	—	(11,437)	(11,437)
<b>Balance at June 30, 2021</b>	<u>82,440,259</u>	<u>\$ 41</u>	<u>4,068,832</u>	<u>\$ (10,666)</u>	<u>\$ 415,325</u>	<u>\$ (196,346)</u>	<u>\$ 208,354</u>
	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total shareholders' equity
	Shares	Amount	Shares	Amount			
<b>Balance at March 31, 2020</b>	79,809,417	\$ 40	3,601,804	\$ (9,900)	\$ 408,633	\$ (186,708)	\$ 212,065
Vesting of restricted stock units and issuance of restricted stock	99,568	—	—	—	—	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	14,594	(30)	—	—	(30)
Share-based compensation	—	—	—	—	1,328	—	1,328
Net income	—	—	—	—	—	452	452
<b>Balance at June 30, 2020</b>	<u>79,908,985</u>	<u>\$ 40</u>	<u>3,616,398</u>	<u>\$ (9,930)</u>	<u>\$ 409,961</u>	<u>\$ (186,256)</u>	<u>\$ 213,815</u>
<b>Balance at December 31, 2019</b>	78,642,078	\$ 39	2,768,399	\$ (8,184)	\$ 406,198	\$ (187,116)	\$ 210,937
Vesting of restricted stock units and issuance of restricted stock	1,566,907	1	—	—	(1)	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	190,326	(446)	—	—	(446)
Repurchase of shares into treasury stock	—	—	657,673	(1,300)	—	—	(1,300)
Exercise of warrants by certain warrant holders (see Note 7)	(300,000)	—	—	—	—	—	—
Share-based compensation	—	—	—	—	3,764	—	3,764
Net income	—	—	—	—	—	860	860
<b>Balance at June 30, 2020</b>	<u>79,908,985</u>	<u>\$ 40</u>	<u>3,616,398</u>	<u>\$ (9,930)</u>	<u>\$ 409,961</u>	<u>\$ (186,256)</u>	<u>\$ 213,815</u>

See notes to consolidated financial statements

**FLUENT, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Amounts in thousands)  
(unaudited)

	<b>Six Months Ended June 30,</b>	
	<b>2021</b>	<b>2020</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net (loss) income	\$ (11,437)	\$ 860
<b>Adjustments to reconcile net (loss) income to net cash provided by (used in) by operating activities:</b>		
Depreciation and amortization	6,739	7,586
Non-cash loan amortization expense	287	694
Share-based compensation expense	2,432	3,678
Non-cash loss on early extinguishment of debt	2,198	—
Non-cash accrued compensation expense for Put/Call Consideration	2,627	530
Goodwill impairment	—	817
Write-off of intangible assets	199	—
Provision for bad debt	98	131
<b>Changes in assets and liabilities, net of business acquisition:</b>		
Accounts receivable	(3,334)	5,513
Prepaid expenses and other current assets	763	(75)
Other non-current assets	(258)	(599)
Operating lease assets and liabilities, net	(91)	(81)
Accounts payable	8,672	(9,973)
Accrued expenses and other current liabilities	(9,345)	(515)
Deferred revenue	(151)	1,328
Other	(64)	(62)
Net cash (used in) provided by operating activities	<u>(665)</u>	<u>9,832</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capitalized costs included in intangible assets	(1,535)	(1,211)
Business acquisition, net of cash acquired	—	(1,426)
Acquisition of property and equipment	(23)	(37)
Net cash used in investing activities	<u>(1,558)</u>	<u>(2,674)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from issuance of long-term debt, net of debt financing costs	49,624	—
Repayments of long-term debt	(42,986)	(3,873)
Exercise of stock options	934	—
Prepayment penalty on debt extinguishment	(766)	—
Taxes paid related to net share settlement of vesting of restricted stock units	(667)	(446)
Proceeds from the issuance of stock	136	—
Repurchase of treasury stock	—	(1,300)
Net cash provided by (used in) financing activities	<u>6,275</u>	<u>(5,619)</u>
Net increase in cash, cash equivalents and restricted cash	4,052	1,539
Cash, cash equivalents and restricted cash at beginning of period	22,567	20,159
Cash, cash equivalents and restricted cash at end of period	<u>\$ 26,619</u>	<u>\$ 21,698</u>
<b>SUPPLEMENTAL DISCLOSURE INFORMATION</b>		
Cash paid for interest	\$ 1,097	\$ 2,100
Cash paid for income taxes	\$ 340	\$ —
Share-based compensation capitalized in intangible assets	\$ 71	\$ 86

See notes to consolidated financial statements

**FLUENT, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except share data)**  
**(unaudited)**

## **1. Summary of significant accounting policies**

### ***(a) Basis of preparation***

The accompanying unaudited consolidated financial statements have been prepared by Fluent, Inc., a Delaware corporation (the "Company" or "Fluent"), in accordance with accounting principles generally accepted in the United States ("US GAAP") and applicable rules and regulations of the Securities and Exchange Commission (the "SEC") regarding interim financial reporting. Certain information and note disclosures normally included in annual financial statements prepared in accordance with US GAAP have been condensed or omitted pursuant to those rules and regulations.

The accompanying unaudited consolidated financial statements reflect all normal recurring adjustments necessary to present fairly the financial position, results of operations, and cash flows for the interim periods, but are not necessarily indicative of the results of operations to be anticipated for any future interim periods or for the full year ending December 31, 2021.

From time to time, the Company may enter into relationships or investments with other entities, and, in certain instances, the entity in which the Company has a relationship or investment may qualify as a *variable interest entity* ("VIE"). The Company consolidates a VIE in its financial statements if the Company is deemed to be the primary beneficiary of the VIE. The primary beneficiary is the party that has the power to direct activities that most significantly impact the operations of the VIE and has the obligation to absorb losses or the right to benefits from the VIE that could potentially be significant to the VIE. As of April 1, 2020, the Company has included Winopoly, LLC ("Winopoly") in its consolidated financial statements as a VIE (as further discussed in Note 11, *Business acquisition* and Note 12, *Variable interest entity*).

The information included in this quarterly report on Form 10-Q should be read in conjunction with the consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020 ("2020 Form 10-K") filed with the SEC on March 16, 2021. The consolidated balance sheet as of December 31, 2020 included herein was derived from the audited financial statements as of that date included in the 2020 Form 10-K.

### **Principles of consolidation**

The consolidated financial statements include the financial statements of the Company and its subsidiaries. All significant transactions among the Company and its subsidiaries have been eliminated upon consolidation.

### ***(b) Recently issued and adopted accounting standards***

In January 2016, FASB issued ASU No. 2016-13, *Financial Instruments—Credit Losses*, and additional changes, modifications, clarifications or interpretations thereafter, which require a reporting entity to estimate credit losses on certain types of financial instruments, and present assets held at amortized cost and available-for-sale debt securities at the amounts expected to be collected. The new guidance is effective for annual and interim periods beginning after December 15, 2022, and early adoption is permitted. The Company is currently evaluating the impact of the new guidance on its consolidated financial statements.

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*, which provides optional guidance to ease the potential burden in accounting for the discontinuation of a reference rate such as LIBOR, formerly known as the London Interbank Offered Rate, because of reference rate reform. The ASU is effective for all entities as of March 12, 2020 through December 31, 2022. The Company is currently evaluating the impact of adopting this guidance on its consolidated financial statements.

On January 1, 2021, FASB issued ASU 2019-12, *Simplifying the Accounting for Income Taxes*, which simplifies the accounting for income taxes by removing certain exceptions and improving the application of existing guidance. The new guidance is effective for annual and interim periods beginning after December 15, 2020. The adoption of ASU 2019-12 on January 1, 2021 did not have a material effect on our consolidated financial statements.

### ***(c) Revenue recognition***

Revenue is recognized when control of goods or services is transferred to customers, in amounts that reflect the consideration the Company expects to be entitled to in exchange for those goods or services. The Company's performance obligation is typically to (a) deliver data records, based on predefined qualifying characteristics specified by the customer, (b) generate conversions, based on predefined user actions (for example, a click, a registration or the installation of an app) and subject to certain qualifying characteristics specified by the customer, (c) verify user interest or transfer calls to advertiser clients as a part of the contact center operation, or (d) deliver media spend as a part of the AdParlor business.

If a customer pays consideration before the Company's performance obligations are satisfied, such amounts are classified as deferred revenue on the consolidated balance sheets. As of June 30, 2021 and December 31, 2020, the balance of deferred revenue was \$1,222 and \$1,373, respectively. The majority of the deferred revenue balance as of December 31, 2020 was recognized into revenue during the first quarter of 2021.

When there is a delay between the period in which revenue is recognized and when a customer invoice is issued, revenue is recognized and the related amounts are recorded as unbilled revenue within accounts receivable on the consolidated balance sheets. As of June 30, 2021 and December 31, 2020, unbilled revenue included in accounts receivable was \$25,581 and \$28,337, respectively. In line with industry practice, the unbilled revenue balance is recorded based on the Company's internally tracked conversions, net of estimated variances between this amount and the amount tracked and subsequently confirmed by customers. Substantially all amounts included within the unbilled revenue balance are invoiced to customers within the month directly following the period of service. Historical estimates related to unbilled revenue have not been materially different from actual revenue billed.





**FLUENT, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
(Amounts in thousands, except share data)  
(unaudited)

**(d) Use of estimates**

The preparation of consolidated financial statements in accordance with US GAAP requires the Company's management to make estimates and assumptions relating to the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses during the reporting periods. Significant items subject to such estimates and assumptions include the allowance for doubtful accounts, useful lives of intangible assets, recoverability of the carrying amounts of goodwill and intangible assets, the portion of revenue subject to estimates for variances between internally-tracked conversions and those confirmed by the customer, purchase accounting, put/call considerations, consolidation of variable interest entity, accruals for contingencies and allowance for deferred tax assets. These estimates are often based on complex judgments and assumptions that management believes to be reasonable, but are inherently uncertain and unpredictable. Actual results could differ from these estimates.

**2. (Loss) income per share**

Basic (loss) income per share is computed by dividing net (loss) income by the weighted average number of common shares outstanding during the period, in addition to restricted stock units ("RSUs") and restricted common stock that are vested but not delivered. Diluted (loss) income per share reflects the potential dilution that could occur if securities or other contracts to issue common stock are exercised or converted into common stock and is calculated using the treasury stock method for stock options, restricted stock units, restricted stock, warrants and deferred common stock. Common equivalent shares are excluded from the calculation in loss periods, as their effects would be anti-dilutive.

For the six months ended June 30, 2021 and 2020, basic and diluted (loss) income per share was as follows:

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
<b>Numerator:</b>				
Net (loss) income	\$ (5,179)	\$ 452	\$ (11,437)	\$ 860
<b>Denominator:</b>				
Weighted average shares outstanding	78,270,386	76,244,975	77,574,295	76,007,997
Weighted average restricted shares vested not delivered	1,691,889	2,265,408	1,986,348	2,549,334
<b>Total basic weighted average shares outstanding</b>	<b>79,962,275</b>	<b>78,510,383</b>	<b>79,560,643</b>	<b>78,557,331</b>
Dilutive effect of assumed conversion of restricted stock units	—	156,393	—	348,461
<b>Total diluted weighted average shares outstanding</b>	<b>79,962,275</b>	<b>78,666,776</b>	<b>79,560,643</b>	<b>78,905,792</b>
<b>Basic and diluted (loss) income per share:</b>				
<b>Basic</b>	<b>\$ (0.06)</b>	<b>\$ 0.01</b>	<b>\$ (0.14)</b>	<b>\$ 0.01</b>
<b>Diluted</b>	<b>\$ (0.06)</b>	<b>\$ 0.01</b>	<b>\$ (0.14)</b>	<b>\$ 0.01</b>

The following potentially dilutive securities were excluded from the calculation of diluted (loss) income per share, as their effects would have been anti-dilutive for the periods presented:

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2021</u>	<u>2020</u>	<u>2021</u>	<u>2020</u>
Restricted stock units	2,843,570	3,412,390	2,843,570	2,288,573
Stock options	2,204,000	2,568,000	2,204,000	2,568,000
Warrants	833,333	2,183,333	833,333	2,183,333
<b>Total anti-dilutive securities</b>	<b>5,880,903</b>	<b>8,163,723</b>	<b>5,880,903</b>	<b>7,039,906</b>

**FLUENT, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
(Amounts in thousands, except share data)  
(unaudited)

**3. Intangible assets, net**

Intangible assets, net, other than goodwill, consist of the following:

	Amortization period (in years)	June 30, 2021	December 31, 2020
<b>Gross amount:</b>			
Software developed for internal use	3	\$ 8,381	\$ 7,376
Acquired proprietary technology	3-5	14,845	14,788
Customer relationships	5-10	37,886	37,886
Trade names	4-20	16,657	16,657
Domain names	20	191	191
Databases	5-10	31,292	31,292
Non-competition agreements	2-5	1,768	1,768
<b>Total gross amount</b>		<u>111,020</u>	<u>109,958</u>
Accumulated amortization:			
Software developed for internal use		(4,249)	(3,551)
Acquired proprietary technology		(12,936)	(12,474)
Customer relationships		(27,303)	(24,657)
Trade names		(4,699)	(4,252)
Domain names		(53)	(48)
Databases		(19,534)	(17,791)
Non-competition agreements		(1,768)	(1,768)
<b>Total accumulated amortization</b>		<u>(70,542)</u>	<u>(64,541)</u>
Net intangible assets:			
Software developed for internal use		4,132	3,825
Acquired proprietary technology		1,909	2,314
Customer relationships		10,583	13,229
Trade names		11,958	12,405
Domain names		138	143
Databases		11,758	13,501
<b>Total intangible assets, net</b>		<u>\$ 40,478</u>	<u>\$ 45,417</u>

The amounts relating to acquired proprietary technology, customer relationships, trade names, domain names, databases and non-competition agreements primarily represent the fair values of intangible assets acquired as a result of the acquisition of Fluent, LLC, effective December 8, 2015 (the "Fluent LLC Acquisition"), the acquisition of Q Interactive, LLC, effective June 8, 2016 (the "Q Interactive Acquisition"), the acquisition of substantially all the assets of AdParlor Holdings, Inc. and certain of its affiliates, effective July 1, 2019 (the "AdParlor Acquisition"), and the acquisition of a 50% interest in Winopoly (the "Winopoly Acquisition"), effective April 1, 2020 (see Note 11, *Business acquisition*).

During the three months ended March 31, 2021, the Company determined that the reduction in operating results of the Fluent reporting unit, along with a decline in the market value of its publicly-traded stock, collectively constituted a triggering event. As such, the Company conducted an interim test of the recoverability of its long-lived assets. Based on the results of this recoverability test, which measured the Company's projected undiscounted cash flows as compared to the carrying value of the asset group, the Company determined that, as of March 31, 2021, its long-lived assets were not impaired. Management believes that the assumptions utilized in this interim impairment testing, including the determination of estimated future cash flows, were reasonable. The Company completed its quarterly triggering event assessment for the three months ended June 30, 2021 and determined that no triggering event had occurred requiring further impairment assessments for its long lived assets.

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Amortization expense of \$3,169 and \$3,659 for the three months ended June 30, 2021 and 2020, respectively, and \$6,346 and \$7,206, for the six months ended June 30, 2021 and 2020, respectively, is included in depreciation and amortization expenses in the consolidated statements of operations. As of June 30, 2021, intangible assets with a carrying amount of \$790, included in the gross amount of software developed for internal use, have not commenced amortization, as they are not ready for their intended use.

As of June 30, 2021, estimated amortization expense related to the Company's intangible assets for the remainder of 2021 and through 2026 and thereafter are as follows:

Year	June 30, 2021
Remainder of 2021	\$ 6,059
2022	11,852
2023	5,504
2024	4,602
2025	4,024
2026 and thereafter	8,437
<b>Total</b>	<b>\$ 40,478</b>

#### 4. Goodwill

Goodwill represents the cost in excess of fair value of net assets acquired in a business combination. As of June 30, 2021, the total balance of goodwill was \$165,088, and relates to the acquisition of Interactive Data, LLC, the Fluent LLC Acquisition, the Q Interactive Acquisition, the AdParlor Acquisition, and the Winopoly Acquisition (see Note 11, *Business acquisition*).

In accordance with ASC 350, *Intangibles - Goodwill and Other*, goodwill is tested at least annually for impairment, or when events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable, by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that its fair value exceeds the carrying value. The measurement date of the Company's annual goodwill impairment test is October 1.

During the three months ended March 31, 2021, the Company determined that the reduction in operating results of the Fluent reporting unit, along with a decline in the market value of its publicly-traded stock, collectively constituted a triggering event. As such, the Company conducted an interim test of the fair value of its goodwill for potential impairment. Based on the results as of March 31, 2021, which used a combination of the income and market approaches to determine the fair value of the Fluent reporting unit, the Company concluded its goodwill of \$160,922 was not impaired since the results of the interim test indicated that the estimated fair value exceeded its carrying value by approximately 17%. The Company believes that the assumptions utilized in its interim impairment testing, including the determination of an appropriate discount rate of 14.5%, long-term profitability growth projections, and estimated future cash flows, are reasonable. The risk of future impairment of goodwill exists if actual results, such as lower than expected revenue, profitability, cash flows, market multiples, discount rates and control premiums, differ from the assumptions used in the Company's interim impairment test.

The Company completed its quarterly triggering event assessment for the three months ended June 30, 2021 and determined no triggering event had occurred requiring further interim impairment assessments for its remaining goodwill. However, if additional reduction in operating results or a decline in the market value of its publicly-traded stock occurs, this could result in future impairment charges.

#### 5. Long-term debt, net

Long-term debt, net, related to the Refinanced Term Loan, the New Credit Facility Term Loan, and Note Payable (each as defined below) consisted of the following:

	June 30, 2021	December 31, 2020
Refinanced Term Loan due 2023 (less unamortized discount and financing costs of \$0 and \$2,386, respectively)	\$ —	\$ 39,350
New Credit Facility Term Loan due 2026 (less unamortized discount and financing costs of \$1,067 and \$0, respectively)	47,683	—
Note Payable due 2021 (less unamortized discount of \$0 and \$24, respectively)	1,250	1,226
Long-term debt, net	48,933	40,576
Less: Current portion of long-term debt	(6,250)	(7,293)
Long-term debt, net (non-current)	<u>\$ 42,683</u>	<u>\$ 33,283</u>

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*Refinanced Term Loan*

On March 31, 2021, Fluent, LLC redeemed \$38,318 aggregate principal amount of our term loan entered into on December 8, 2015 and due March 26, 2023 (the "Refinanced Term Loan"), prior to maturity, resulting in a loss of \$2,964 as a cost of early extinguishment of debt.

*New Credit Facility*

On March 31, 2021, Fluent, LLC entered into a credit agreement (the "Credit Agreement") by and among, Fluent, LLC, certain subsidiaries of Fluent, LLC as guarantors, Citizens Bank, N.A. as administrative agent, lead arranger and bookrunner, BankUnited, N.A. and Silicon Valley Bank. The Credit Agreement provides for a term loan in the aggregate principal amount of \$50.0 million funded on the Closing Date (the "Term Loan"), along with an undrawn revolving credit facility of up to \$15.0 million (the "Revolving Loans," and together with the Term Loan, the "New Credit Facility").

The proceeds of the Term Loan were used to repay all outstanding amounts under the Refinanced Term Loan, including transaction fees and expenses, and for working capital and other general corporate purposes.

Borrowings under the Credit Agreement bear interest at a rate per annum equal to an applicable margin, plus, at the Company's option, either a base rate or a London Inter-bank Offered Rate ("LIBOR") rate (subject to a floor of 0.25%). The applicable margin is between 0.75% and 1.75% for base rate borrowings and 1.75% and 2.75% for LIBOR rate borrowings, depending upon the Company's consolidated leverage ratio. The opening interest rate of the New Credit Facility is 2.50% (LIBOR + 2.25%).

Borrowings under the Credit Agreement are secured by substantially all of the assets of Fluent, LLC and, subject to certain exclusions, each of its existing and future U.S. subsidiaries. Such assets include, subject to certain limitations, the equity interests of each of the existing and future direct and indirect U.S. subsidiaries of Fluent, LLC.

The Credit Agreement contains negative covenants that, among other things, limit Fluent, LLC's ability to: incur indebtedness; grant liens on its assets; enter into certain investments; consummate fundamental change transactions; engage in mergers or acquisitions or dispose of assets; enter into certain transactions with affiliates; make changes to its fiscal year; enter into certain restrictive agreements; and make certain restricted payments (including for dividends and stock repurchases, which are generally prohibited except in a few circumstances and/or up to specified amounts). Each of these limitations are subject to various conditions.

The Credit Agreement matures on March 31, 2026 and interest is payable monthly. Scheduled principal amortization of the Term Loan is \$1,250 per quarter, which commenced with the fiscal quarter ended June 30, 2021. At June 30, 2021, the Company was in compliance with all of the financial and other covenants under the Credit Agreement.

*Note Payable*

On July 1, 2019, in connection with the AdParlor Acquisition, the Company issued a promissory note (the "Note Payable") in the principal amount of \$2,350, net of discount of \$150 from imputing interest on the non-interest bearing note using a 4.28% rate. The promissory note is guaranteed by the Company's subsidiary, Fluent, LLC, does not accrue interest except in the case of default, is payable in two equal installments on the first and second anniversaries of the date of closing of the acquisition and is subject to setoff in respect of certain indemnity and other matters. The first installment payment of \$1,250 was made on July 1, 2020, and the second installment payment of \$1,250 was made on July 1, 2021, in each case using cash on hand.

*Maturities*

As of June 30, 2021, scheduled future maturities of the Credit Agreement and Note Payable are as follows:

Year	<u>June 30, 2021</u>
Remainder of 2021	\$ 3,750
2022	5,000
2023	5,000
2024	5,000
2025	31,250
Total maturities	<u>\$ 50,000</u>

*Fair value*

As of June 30, 2021, the fair value of long-term debt is considered to approximate its carrying value. The fair value assessment represents a Level 2 measurement.

**6. Income taxes**

The Company is subject to federal and state income taxes in the United States. The tax provision for interim periods is determined using an estimate of the Company's annual effective tax rate. The Company updates its estimated annual effective tax rate on a quarterly basis and, if the estimate changes, makes a cumulative adjustment.

As of June 30, 2021 and December 31, 2020, the Company has recorded a full valuation allowance against net deferred tax assets, and intends to continue maintaining a full valuation allowance on these net deferred tax assets until there is sufficient evidence to support the release of all or a portion of these

allowances. Release of some or all of the valuation allowance would result in the recognition of certain deferred tax assets and an increase in deferred tax benefit for any period in which such a release may be recorded, however, the exact timing and amount of any valuation allowance release are subject to change, depending upon the level of profitability the Company is able to achieve and the net deferred tax assets available.

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For the six months ended June 30, 2021 and 2020, the Company's effective income tax benefit rate of 0% differed from the statutory federal income tax rate of 21%, with such differences resulting primarily from the application of the full valuation allowance against the Company's deferred tax assets.

The Company assesses its income tax positions and records tax benefits for all years subject to examination based upon its evaluation of the facts, circumstances and information available as of the reporting dates. For those tax positions where it is more-likely-than-not that a tax benefit will be sustained, the Company has recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more-likely-than-not that a tax benefit will be sustained, no tax benefit has been recognized in the Company's financial statements.

As of June 30, 2021 and December 31, 2020, the balance of unrecognized tax benefits was \$1,480. The unrecognized tax benefits, if recognized, would result in an increase to net operating losses that would be subject to a valuation allowance and, accordingly, result in no impact to the Company's annual effective tax rate. As of June 30, 2021, the Company has not accrued any interest or penalties with respect to its uncertain tax positions.

The Company does not anticipate a significant increase or reduction in unrecognized tax benefits within the next twelve months.

## **7. Common stock, treasury stock and warrants**

### *Common stock*

As of June 30, 2021 and December 31, 2020, the number of issued shares of common stock was 82,440,259 and 80,295,141, respectively, which included shares of treasury stock of 4,068,832 and 3,945,867, respectively.

For the six months ended June 30, 2021, the change in the number of issued shares of common stock was the result of an aggregate 1,947,118 shares of common stock issued upon vesting of RSUs, including 122,965 shares of common stock withheld to cover statutory taxes upon such vesting, which are reflected in treasury stock, as discussed below. The change also included the exercise of 198,000 stock options by a former key executive.

### *Treasury stock*

As of June 30, 2021 and December 31, 2020, the Company held shares of treasury stock of 4,068,832 and 3,945,867, with a cost of \$10,666 and \$9,999, respectively.

The Company's share-based incentive plans allow employees the option to either make cash payment or forfeit shares of common stock upon vesting to satisfy federal and state statutory tax withholding obligations associated with equity awards. The forfeited shares of common stock may be taken into treasury stock by the Company or sold on the open market. For the six months ended June 30, 2021, 122,965 shares of common stock were withheld to cover statutory taxes owed by certain employees for this purpose, all of which were taken into treasury stock. See Note 8, *Share-based compensation*.

### *Warrants*

As of June 30, 2021 and December 31, 2020, warrants to purchase an aggregate of 833,333 of common stock were outstanding with exercise prices ranging from \$3.75 to \$6.00 per share.

On July 9, 2018 the Company entered into First Amendments (the "First Amendments") to the Amendments to Warrants and Agreements to Exercise ("Amended Whitehorse Warrants") with (i) H.I.G. Whitehorse SMA ABE, L.P. regarding 46,667 warrants to purchase common stock of the Company, par value \$0.0005 per share, at an exercise price of \$3.00 per share; (ii) H.I.G. Whitehorse SMA Holdings I, LLC regarding 66,666 warrants to purchase common stock of the Company at an exercise price of \$3.00 per share; and (iii) Whitehorse Finance, Inc. regarding 186,667 warrants to purchase common stock of the Company at an exercise price of \$3.00 per share. In November 2017, the Amended Whitehorse Warrants were exercised and the Company issued an aggregate of 300,000 shares of common stock of the Company (the "Warrant Shares") to the warrant holders. Pursuant to the First Amendments, the warrant holders had the right, but not the obligation, to require the Company to purchase from these warrant holders the 300,000 Warrant Shares at \$3.8334 per share (the "Put Right"), which could be exercised during the period commencing January 1, 2019 and ending December 15, 2019. On December 6, 2019, the Company entered into the Second Amendments to the Amended Whitehorse Warrants, pursuant to which the expiration of the Put Right was extended from December 15, 2019 to January 31, 2020. On January 31, 2020, the holders of the Amended Whitehorse Warrants exercised the Put Right, requiring the Company to purchase from the warrant holders the 300,000 Warrant Shares for an aggregate of \$1,150. The Company funded such purchase with cash on hand.

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## 8. Share-based compensation

As of June 30, 2021, the Company maintains two share-based incentive plans: the Cogint, Inc. 2015 Stock Incentive Plan and the Fluent, Inc. 2018 Stock Incentive Plan (the "2018 Plan") which, combined, authorize the issuance of 21,337,143 shares of common stock. As of June 30, 2021, there were 1,509,149 shares of common stock reserved for issuance under the 2018 Plan. The primary purpose of the plans is to attract, retain, reward and motivate certain individuals by providing them with opportunities to acquire or increase their ownership interests in the Company.

### Stock options

The Compensation Committee of the Company's Board of Directors approved the grant of stock options to certain Company executives, which were issued on February 1, 2019, December 20, 2019, March 1, 2020 and March 1, 2021 respectively, under the 2018 Plan. Subject to continuing service, 50% of the shares subject to these stock options will vest if the Company's stock price remains above 125.00%, 133.33%, 133.33% and 133.33%, respectively, of the exercise price for twenty consecutive trading days, and the remaining 50% of the shares subject to these stock options will vest if the Company's stock price remains above 156.25%, 177.78%, 177.78% and 177.78%, respectively, of the exercise price for twenty consecutive trading days; provided, that no shares will vest prior to the first anniversary of the grant date. As of March 31, 2021, the first condition for the stock options issued on February 1, 2019, December 20, 2019 and March 1, 2020 have been met and the second condition for the stock options issued on December 20, 2019 and March 1, 2020 have been met. Any shares that remain unvested as of the fifth anniversary of the grant date will vest in full on such date. The fair value of the stock options granted was estimated at the trading day before the date of grant using a Monte Carlo simulation model. The key assumptions utilized to calculate the grant-date fair values for these awards are summarized below:

<b>Issuance Date</b>	<b>February 1, 2019</b>	<b>December 20, 2019</b>	<b>March 1, 2020</b>	<b>March 1, 2021</b>
Fair value lower range	\$ 2.81	\$ 1.58	\$ 1.46	\$ 4.34
Fair value higher range	\$ 2.86	\$ 1.61	\$ 1.49	\$ 4.43
Exercise price	\$ 4.72	\$ 2.56	\$ 2.33	\$ 6.33
Expected term (in years)	1.0 - 1.3	1.0 - 1.6	1.0 - 1.5	1.0 - 1.3
Expected volatility	65%	70%	70%	80%
Dividend yield	—%	—%	—%	—%
Risk-free rate	2.61%	1.85%	1.05%	1.18%

For the six months ended June 30, 2021, details of stock option activity were as follows:

	<b>Number of options</b>	<b>Weighted average exercise price per share</b>	<b>Weighted average remaining contractual term (in years)</b>	<b>Aggregate intrinsic value</b>
Outstanding as of December 31, 2020	2,294,000	\$ 4.34	8.0	\$ 2,256
Granted	108,000	\$ 6.33	9.7	—
Exercised	(198,000)			
Outstanding as of June 30, 2021	2,204,000	\$ 4.41	7.6	\$ 190
Options exercisable as of June 30, 2021	1,307,000	\$ 4.06	7.5	\$ 190

The aggregate intrinsic value amounts in the table above represent the difference between the closing price of the Company's common stock at the end of the reporting period and the corresponding exercise prices, multiplied by the number of in-the-money stock options as of the same date.

For the six months ended June 30, 2021, the unvested balance of options was as follows:

	<b>Number of options</b>	<b>Weighted average exercise price per share</b>	<b>Weighted average remaining contractual term (in years)</b>
Unvested as of December 31, 2020	1,225,000	\$ 3.93	8.4
Granted	108,000	\$ 6.33	9.7
Vested	(436,000)		
Unvested as of June 30, 2021	897,000	\$ 4.91	7.8



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Compensation expense recognized for stock options of \$123 and \$152 for the three months ended June 30, 2021 and 2020, respectively, and \$290 and \$1,351 for the six months ended June 30, 2021 and 2020, respectively, was recorded in sales and marketing, product development and general and administrative expenses in the consolidated statements of operations. As of June 30, 2021, there was \$334 of unrecognized share-based compensation with respect to outstanding stock options.

**Restricted stock units and restricted stock**

For the six months ended June 30, 2021, details of unvested RSU and restricted stock activity were as follows:

	<b>Number of units</b>	<b>Weighted average grant-date fair value</b>
Unvested as of December 31, 2020	3,377,097	\$ 7.09
Granted	1,043,660	\$ 5.88
Vested and delivered	(1,824,153)	\$ 2.98
Withheld as treasury stock (1)	(122,965)	\$ 4.91
Vested not delivered (2)	570,335	\$ 2.70
Forfeited	(200,404)	\$ 4.20
Unvested as of June 30, 2021	<u>2,843,570</u>	<u>\$ 8.69</u>

- (1) As discussed in Note 7, *Common stock, treasury stock and warrants*, the increase in treasury stock was due to shares withheld to cover statutory withholding taxes upon the delivery of shares following vesting of RSUs. As of June 30, 2021, there were 4,068,832 outstanding shares of treasury stock.
- (2) Vested not delivered represents vested RSUs with delivery deferred to a future time. For the six months ended June 30, 2021, there was a net decrease of 570,335 shares included in the vested not delivered balance as a result of the delivery of 650,333 shares, partially offset by the vesting of 79,998 shares with deferred delivery election. As of June 30, 2021, 1,691,666 outstanding RSUs were vested not delivered.

Compensation expense recognized for RSUs and restricted stock of \$1,108 and \$1,176 for the three months ended June 30, 2021 and 2020, respectively, and \$2,213 and \$2,413 for the six months ended June 30, 2021 and 2020, respectively, was recorded in sales and marketing, product development and general and administrative in the consolidated statements of operations, and intangible assets in the consolidated balance sheets. The fair value of the RSUs and restricted stock was estimated using the closing prices of the Company's common stock on the dates of grant.

As of June 30, 2021, unrecognized share-based compensation expense associated with the granted RSUs and stock options amounted to \$9,998, which is expected to be recognized over a weighted average period of 2.3 years.

For the three and six months ended June 30, 2021 and 2020, share-based compensation for the Company's stock option, RSU, common stock and restricted stock awards were allocated to the following accounts in the consolidated financial statements:

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2021</b>	<b>2020</b>	<b>2021</b>	<b>2020</b>
Sales and marketing	\$ 209	\$ 269	\$ 372	\$ 487
Product development	233	286	501	523
General and administrative	759	726	1,559	2,668
Share-based compensation expense	1,201	1,281	2,432	3,678
Capitalized in intangible assets	30	47	71	86
Total share-based compensation	<u>\$ 1,231</u>	<u>\$ 1,328</u>	<u>\$ 2,503</u>	<u>\$ 3,764</u>

On May 13, 2021, the Company's then-CEO and then-President purchased a total of 50,000 shares from the Company for cash under the 2018 Stock Incentive Plan. The per share purchase price for each transaction was the closing price reported on Nasdaq on the date of purchase.

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**9. Segment information**

The Company identifies operating segments as components of an entity for which discrete financial information is available and is regularly reviewed by the chief operating decision maker (“CODM”) in making decisions regarding resource allocation and performance assessment. The profitability measure employed by CODM is EBITDA. As of June 30, 2021, the Company has two operating segments and two corresponding reporting units, “Fluent” and “All Other,” and one reportable segment. “All Other” represents the operating results of AdParlor, LLC, and is included for purposes of reconciliation of the respective balances below to the consolidated financial statements. “Fluent,” for the purposes of segment reporting, represents the consolidated operating results of the Company excluding “All Other.”

Summarized financial information concerning the Company's segments is shown in the following tables below:

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2021</b>	<b>2020</b>	<b>2021</b>	<b>2020</b>
<b>Fluent segment revenue:</b>				
United States	\$ 59,306	\$ 57,462	\$ 117,558	\$ 125,613
International	10,693	12,935	19,983	22,346
Fluent segment revenue	<u>\$ 69,999</u>	<u>\$ 70,397</u>	<u>\$ 137,541</u>	<u>\$ 147,959</u>
<b>All Other segment revenue:</b>				
United States	\$ 3,338	\$ 1,012	\$ 5,935	\$ 2,197
International	41	100	72	287
All Other segment revenue	<u>\$ 3,379</u>	<u>\$ 1,112</u>	<u>\$ 6,007</u>	<u>\$ 2,484</u>
<b>Segment EBITDA</b>				
Fluent segment EBITDA	\$ (1,582)	\$ 6,809	\$ (172)	\$ 12,698
All Other segment EBITDA	196	(1,171)	(128)	(1,387)
Total EBITDA	<u>(1,386)</u>	<u>5,638</u>	<u>(300)</u>	<u>11,311</u>
Depreciation and amortization	3,366	3,853	6,739	7,586
Total (loss) income from operations	<u>\$ (4,752)</u>	<u>\$ 1,785</u>	<u>\$ (7,039)</u>	<u>\$ 3,725</u>
			<b>June 30,</b>	<b>December 31,</b>
			<b>2021</b>	<b>2020</b>
<b>Total assets:</b>				
Fluent			\$ 290,717	\$ 292,616
All Other			20,153	17,604
Total assets			<u>\$ 310,870</u>	<u>\$ 310,220</u>

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## 10. Contingencies

In the ordinary course of business, the Company is subject to loss contingencies that cover a range of matters. An estimated loss from a loss contingency, such as a legal proceeding or claim, is accrued if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In determining whether a loss should be accrued, the Company evaluates, among other factors, the degree of probability and the ability to reasonably estimate the amount of any such loss.

On October 26, 2018, the Company received a subpoena from the New York Attorney General's Office ("NY AG") regarding compliance with New York Executive Law § 63(12) and New York General Business Law § 349, as they relate to the collection, use, or disclosure of information from or about consumers or individuals, as such information was submitted to the Federal Communication Commission ("FCC") in connection with the FCC's rulemaking proceeding captioned "Restoring Internet Freedom," WC Docket No. 17-108. On May 6, 2021, the Company and the NY AG executed an Assurance of Discontinuance (the "AOD") to resolve this matter. The AOD imposed injunctive provisions on the Company's practices with regard to political advocacy campaigns, most of which the Company had already implemented, and imposed a \$3.7 million penalty, which was in line with the Company's accrual in the prior quarter and paid in full as of June 30, 2021.

On December 13, 2018, the Company received a subpoena from the United States Department of Justice ("DOJ") regarding the same issue. On March 12, 2020, the Company received a subpoena from the Office of the Attorney General of the District of Columbia ("DC AG") regarding the same issue. The Company was responsive and fully cooperated with each of the DOJ and the DC AG.

On June 27, 2019, as a part of two sales and use tax audits covering the period from December 1, 2010 to November 30, 2019, the New York State Department of Taxation and Finance (the "Tax Department") issued a letter stating its position that revenue derived from certain of the Company's customer acquisition and list management services are subject to sales tax, as a result of being deemed information services. The Company disputed the Tax Department's position on several grounds, but on January 14 and 15, 2020, the Tax Department issued Statements of Proposed Audit Adjustment totaling \$8.2 million, including \$2.0 million of interest. The Company formally disagreed with the amount of the Proposed Audit Adjustments and met with the Tax Department on March 4, 2020. During that meeting, the Company informed the Tax Department that a majority of the Proposed Audit Adjustments was attributable to revenue derived from transfers which were either excluded resales or sourced outside of New York, and renewed its challenge as to the taxability of its customer acquisition revenue. On July 22 and 31, 2020, the Company received Notices of Determination from the Tax Department totaling \$3.0 million, including \$0.7 million of interest. On October 16, 2020, the Company filed challenges to the Notices of Determination. On June 21, 2021, the Company and the Tax Department participated in a conciliation conference, but the audits were not resolved. Based on the foregoing, the Company believes it is probable that a sales tax liability may result from this matter, and has estimated the range of any such liability to be between \$0.7 million and \$3.0 million. The Company has accrued a liability associated with these sales and use tax audits at the low end of this range.

On January 28, 2020, the Company received a Civil Investigative Demand ("CID") from the Federal Trade Commission ("FTC") regarding compliance with the Federal Trade Commission Act, 15 U.S.C. §45 or the Telemarketing Sales Rule, 16 C.F.R. Part 310, as they relate to the advertising, marketing, promotion, offering for sale, or sale of rewards and other products, the transmission of commercial text messages, and/or consumer privacy or data security. The Company has been responsive and is fully cooperating with the FTC. At this time, it is not possible to predict the ultimate outcome of this matter or the significance, if any, to the Company's business, results of operations or financial position.

## 11. Business acquisition

### *Winopoly acquisition*

On April 1, 2020, the Company acquired, through a wholly owned subsidiary, a 50% membership interest in Winopoly (the "Winopoly Acquisition") for a deemed purchase price of \$2,553, which consisted of \$1,553 in cash and contingent consideration with a fair value of \$1,000 payable based upon the achievement of specified revenue targets over the eighteen-month period following the completion of the acquisition. As of the first quarter of 2021, the initial contingent consideration of \$1,000 had been paid based on specific revenue targets having been met. On May 17, 2021, additional contingent consideration that was not previously deemed to be probable of payment in the amount of \$500 was paid based on a specific revenue target having been met. Winopoly is a contact center operation, which serves as a marketplace that matches consumers sourced by Fluent and other third parties with advertiser clients. In accordance with ASC 805, the Company determined that the Winopoly Acquisition constituted the purchase of a business.

The fair value of the acquired customer relationships of \$600, to be amortized over a period of five years, was determined using the excess earnings method, a variation of the income approach, while the fair value of the acquired developed technology of \$800, to be amortized over a period of three years, was determined using the cost approach. The amount of the purchase price in excess of the fair value of the net assets acquired was recorded as goodwill in the amount of \$1,131 and primarily relates to intangible assets that do not qualify for separate recognition, including assembled workforce and synergies.

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**(Amounts in thousands, except share data)**  
**(unaudited)**

At any time between the fourth and sixth anniversary of the Winopoly Acquisition, the sellers may exercise a put option whereby the Company is required to acquire the remaining 50% membership interests in Winopoly. During this period, the Company also has the ability to exercise a call option whereby the sellers must sell the remaining 50% membership interests in Winopoly to the Company. The purchase price paid for the remaining 50% membership interests would be calculated based on a multiple of 4.0 x EBITDA (as such term is defined in the agreement between the parties), applied to a twelve-month period spanning the five months prior to the month of the put/call closing extending through six months following the month of the put/call closing (the "Put/Call Consideration"). In connection with the exercise of the put/call option, certain of the seller parties must enter into employment agreements with the Company in order to receive their respective shares of the Put/Call Consideration.

Although the sellers maintain an equity interest in Winopoly, the Company has deemed this equity interest to be non-substantive in nature, as the sellers will primarily benefit from the Winopoly Acquisition based on periodic distributions of the earnings of Winopoly and the Put/Call Consideration, both of which are dependent on the sellers' continued service. Without providing service, the sellers could benefit from their pro rata share of the proceeds upon a third-party sale or liquidation of Winopoly; however, such a liquidity event is considered unlikely. Therefore, no non-controlling interest has been recognized. Periodic distributions for services rendered will be recorded as compensation expense. In addition, the Company estimates the amount of the Put/Call Consideration, which is accreted over the six-year estimated service period, consisting of the estimated four years until the put/call can be exercised and the additional two-year service requirement. For the three and six months ended June 30, 2021, compensation expense of \$881 and \$2,627, respectively, and for the three and six months ended June 30, 2020 compensation expense of \$530 related to the Put/Call Consideration was recorded in general and administrative on the consolidated statement of operations, with a corresponding liability in other non-current liabilities on the consolidated balance sheet.

## **12. Variable Interest Entity**

The Company has determined that Winopoly (as discussed in Note 11, *Business acquisition*) qualifies as a VIE, for which the Company is the primary beneficiary. A VIE is an entity that either (i) has insufficient equity to permit the entity to finance its activities without additional subordinated financial support, or (ii) has equity investors who lack the characteristics of a controlling financial interest. The primary beneficiary is the party that has the power to direct activities that most significantly impact the operations of the VIE and has the obligation to absorb losses or the right to benefits from the VIE that could potentially be significant to the VIE. We assess whether we are the primary beneficiary of a VIE at the inception of the arrangement and at each reporting date.

Winopoly is a VIE, and the Company is its primary beneficiary, as contractual arrangements provide the Company with control over certain activities that most significantly impact its economic performance. These significant activities include the compliance practices of Winopoly and the Company's provisions of leads that Winopoly uses to generate its revenue, which ultimately give the Company its controlling interest. The Company therefore consolidates Winopoly in its consolidated financial statements, inclusive of deemed compensation expense to the sellers for services rendered.

## **13. Related party transactions**

During the three and six months ended June 30, 2021, the Company recognized revenue from a client in which the then-CEO holds a significant ownership interest. Accounts receivable for this client were \$119 and \$137 as of June 30, 2021 and December 31, 2020, respectively. For the three and six months ended June 30, 2021, the Company recognized revenue from this client of \$0 and \$33, respectively, and for the three and six months ended June 30, 2020, the Company recognized revenue from this client of \$95 and \$145, respectively. In accordance with the Company's policies and procedures for determining allowances for doubtful accounts and write-offs, the Company wrote-off the outstanding accounts receivable from this client as of June 30, 2021.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

*You should read the following discussion in conjunction with our consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. This Quarterly Report on Form 10-Q contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 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"), about our expectations, beliefs, or intentions regarding our business, financial condition, results of operations, strategies, the outcome of litigation, or prospects. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends, or results as of the date they are made. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those contained in this and our other Quarterly Reports on Form 10-Q, as well as the disclosures made in the Company's Annual Report on Form 10-K for the year ended December 31, 2020 filed on March 16, 2021 ("2020 Form 10-K"), and other filings we make with the Securities and Exchange Commission (the "SEC"). We do not undertake any obligation to update forward-looking statements, except as required by law. We intend that all forward-looking statements be subject to the safe harbor provisions of PSLRA. These forward-looking statements are only predictions and reflect our views as of the date they are made with respect to future events and financial performance.*

### Overview

Fluent, Inc. ("we," "us," "our," "Fluent," or the "Company"), is an industry leader in data-driven digital marketing services. We primarily perform customer acquisition services by operating highly scalable digital marketing campaigns, through which we connect our advertiser clients with consumers they are seeking to reach. We deliver performance-based marketing executions and lead generation data records to our clients, which in 2020 included over 500 consumer brands, direct marketers and agencies across a wide range of industries, including Media & Entertainment, Financial Products & Services, Health & Wellness, Retail & Consumer, and Staffing & Recruitment.

We attract consumers at scale to our owned digital media properties primarily through promotional offerings and employment opportunities. To register on our sites, consumers provide their names, contact information and opt-in permission to present them with offers on behalf of our clients. Approximately 90% of these users engage with our media on their mobile devices or tablets. Our always-on, real-time capabilities enable users to access our media whenever and wherever they choose.

Once users have registered with our sites, we integrate proprietary direct marketing technologies to engage them with surveys, polls and other experiences, through which we learn about their lifestyles, preferences and purchasing histories. Based on these insights, we serve targeted, relevant offers to them on behalf of our clients. As new users register and engage with our sites and existing registrants re-engage, we believe the enrichment of our database expands our addressable client base and improves the effectiveness of our performance-based campaigns.

Since our inception, we have amassed a large, proprietary database of first-party, self-declared user information and preferences. We have permission to contact the majority of users in our database through multiple channels, such as email, direct mail, telephone, push notifications and SMS text messaging. We leverage this data in our performance offerings primarily to serve advertisements that we believe will be relevant to users based on the information they provide, and in our lead generation offerings to provide our clients with users' contact information so that our clients may communicate with the users directly. We continue to leverage our existing database into new revenue streams, including utilization-based models, such as programmatic advertising.

### Second Quarter Financial Summary

Three months ended June 30, 2021 compared to three months ended June 30, 2020:

- Revenue increased 3% to \$73.4 million, from \$71.5 million.
- Net loss was \$5.2 million, or \$0.06 per share, compared to net income of \$0.5 million or \$0.01 per share.
- Media margin decreased 19% to \$20.1 million, from \$24.8 million, representing 27.4% of revenue.
- Adjusted EBITDA decreased 80% to \$1.9 million, based on net loss of \$5.2 million, from \$9.4 million, based on net income of \$0.5 million.
- Adjusted net loss was \$1.9 million, or \$0.02 per share, compared to adjusted net income of \$4.2 million, or \$0.05 per share.

Six months ended June 30, 2021 compared to six months ended June 30, 2020:

- Revenue decreased 5% to \$143.5 million, from \$150.4 million.
- Net loss was \$11.4 million, or \$0.14 per share, compared to net income of \$0.9 million or \$0.01 per share.
- Media margin decreased 8% to \$45.0 million, from \$48.7 million, representing 31.4% of revenue.
- Adjusted EBITDA decreased 64% to \$6.6 million, based on net loss of \$11.4 million, from \$18.4 million, based on net income of \$0.9 million.
- Adjusted net loss was \$1.6 million, or \$0.02 per share, compared to adjusted net income of \$8.0 million, or \$0.10 per share.

Media margin, adjusted EBITDA and adjusted net income are non-GAAP financial measures.

### Trends Affecting our Business

#### **Development, Acquisition and Retention of High-Quality Targeted Media Traffic**

A key challenge for our business is identifying and accessing media sources that are of high quality and able to attract targeted users to our media properties. As our business has grown, we have attracted larger and more sophisticated clients to our platform. To further increase our value proposition to clients and to fortify our leadership position in relation to the evolving regulatory landscape of our industry, we commenced a traffic quality initiative (the "Traffic Quality Initiative") in 2020. We believe that significant value can be created by improving the quality of traffic we source to our media properties, through higher participation rates on our sites, leading to higher conversion rates, resulting in increased monetization and ultimately increasing revenue and media margin.

Through this initiative, we substantially curtailed the volume of lower quality affiliate traffic that we source, particularly during the fourth quarter of 2020 and the first quarter of 2021, and continue to make smaller adjustments as appropriate. See "Results of Operations" below for additional detail on the

impact to our revenue during the first quarter of 2021. To replace this lower quality traffic, we are testing and scaling various media channels, strategies and partners to generate consumer traffic meeting our quality requirements. Some of these strategies tested in the second quarter of 2021 involved increased media spend with major digital media platforms and revised bidding strategies for affiliate traffic, each of which were expected to yield lower margins, with the intent to optimize spend for improved profitability in future periods. The mix and profitability of our media channels, strategies and partners is likely to be dynamic and reflect evolving market dynamics and the impact of our Traffic Quality Initiative. Consolidation of media sources, changes in search engine, email and text message blocking algorithms and increased competition for available media have made the process of sourcing new traffic challenging during 2021 and may continue to do so in the future. As we test and scale new media channels, strategies and partners, we may determine that certain sources initially able to provide us profitable quality traffic may not be able to maintain our quality standards over time, and we may need to discontinue, or direct a modification of the practices of, such sources, which could reduce profitability. However, we believe the Traffic Quality Initiative will benefit the Company over time, providing the foundation to support sustainable long-term growth and positioning us as an industry leader.

### ***Seasonality and Cyclicity***

Our results are subject to fluctuation as a result of seasonality and cyclicity in our and our clients' businesses. For example, our fourth fiscal quarter ending December 31 is typically characterized by higher advertiser budgets, which can be somewhat offset by seasonal challenges of lower availability and/or higher pricing for some forms of media during the holiday period. Further, as reflected in historical data from the Interactive Advertising Bureau (IAB), industry spending on internet advertising has generally declined sequentially in the first quarter of the calendar year from the fourth quarter. Similar to the industry overall, some of our clients have lower advertising budgets during our first fiscal quarter ending March 31; however, we believe that the breadth of industries in which our clients operate provides us with some insulation from these fluctuations.

In addition to variations in budgets from quarter to quarter, certain clients have budgets that start stronger at the beginning of quarterly or monthly periods, may reach limits during such periods and then may have needs to satisfy their performance objectives at the end of such periods. Beyond these budgetary constraints and buying patterns of clients, other factors affecting our business may include macroeconomic conditions affecting the digital media industry and the various client verticals we serve.

### **COVID-19 Update**

On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic. At this time, our operations have not been significantly impacted by the global economic impact of COVID-19, and we have taken appropriate measures to ensure that we are able to conduct our business remotely without significant disruptions. The economic uncertainty caused by COVID-19 has had varying degrees of impact on certain of our advertiser clients in certain industry verticals over the course of the pandemic. For example, industry verticals such as staffing and recruitment and financial products and services exhibited reduced pricing and/or demand following the onset of the pandemic and have subsequently recovered to varying degrees since that time. On the other hand, demand from certain advertisers in other verticals, such as streaming services and mobile gaming, increased during the pandemic and has since remained strong. With the proliferation of COVID-19 vaccinations in the U.S. during the second quarter of 2021, we have seen a substantial recovery in the staffing and recruitment vertical. There may continue to be additional shifts in pricing and/or demand among our clients, as the trajectory of the pandemic and future economic outlook remain uncertain.

We implemented company-wide work-from-home beginning on March 13, 2020. During the second quarter of 2021, we began to open our headquarters to employees that meet health protocols and voluntarily choose to work in the office. We expect to implement a more formal policy regarding working from home later in the third quarter. While we believe we have adapted well to a work-from-home environment, COVID-19 increases the likelihood of certain risks of disruption to our business, such as the incapacity of certain employees or system interruptions, which could lead to diminishment of our regular business operations, technological capacity and cybersecurity capabilities, as well as operational inefficiencies and reputational harm.

Please see "Results of Operations" for further discussion of the possible impact of the COVID-19 pandemic on our business.

### Definitions, Reconciliations and Uses of Non-GAAP Financial Measures

We report the following non-GAAP measures:

Media margin is defined as revenue minus cost of revenue (exclusive of depreciation and amortization) attributable to variable costs paid for media and related expenses. Media margin is also presented as percentage of revenue.

Adjusted EBITDA is defined as net (loss) income excluding (1) income taxes, (2) interest expense, net, (3) depreciation and amortization, (4) share-based compensation expense, (5) loss on early extinguishment of debt, (6) accrued compensation expense for Put/Call Consideration, (7) goodwill impairment, (8) write-off of intangible assets, (9) acquisition-related costs, (10) restructuring and other severance costs, and (11) certain litigation and other related costs.

Adjusted net income is defined as net (loss) income excluding (1) Share-based compensation expense, (2) loss on early extinguishment of debt, (3) accrued compensation expense for Put/Call Consideration, (4) goodwill impairment, (5) write-off of intangible assets, (6) acquisition-related costs, (7) restructuring and other severance costs, and (8) certain litigation and other related costs. Adjusted net income is also presented on a per share (basic and diluted) basis.

Below is a reconciliation of media margin from net (loss) income, which we believe is the most directly comparable GAAP measure.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
<b>Net (loss) income</b>	\$ (5,179)	\$ 452	\$ (11,437)	\$ 860
Income tax benefit	—	—	(1)	—
Interest expense, net	427	1,333	1,435	2,865
Depreciation and amortization	3,366	3,853	6,739	7,586
Loss on early extinguishment of debt	—	—	2,964	—
Goodwill impairment	—	817	—	817
Write-off of intangible assets	199	—	199	—
General and administrative	11,527	10,044	23,226	21,120
Product development	3,433	3,115	6,867	5,846
Sales and marketing	3,000	2,888	5,961	5,718
Non-media cost of revenue (1)	3,363	2,312	9,053	3,915
<b>Media margin</b>	<u>\$ 20,136</u>	<u>\$ 24,814</u>	<u>\$ 45,006</u>	<u>\$ 48,727</u>
Revenue	<u>\$ 73,378</u>	<u>\$ 71,509</u>	<u>\$ 143,548</u>	<u>\$ 150,443</u>
<b>Media margin % of revenue</b>	<u>27.4%</u>	<u>34.7%</u>	<u>31.4%</u>	<u>32.4%</u>

(1) Represents the portion of cost of revenue (exclusive of depreciation and amortization) not attributable to variable costs paid for media and related expenses.

Below is a reconciliation of adjusted EBITDA from net (loss) income, which we believe is the most directly comparable GAAP measure:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
<b>Net (loss) income</b>	\$ (5,179)	\$ 452	\$ (11,437)	\$ 860
Income tax benefit	—	—	(1)	—
Interest expense, net	427	1,333	1,435	2,865
Depreciation and amortization	3,366	3,853	6,739	7,586
Share-based compensation expense	1,201	1,281	2,432	3,678
Loss on early extinguishment of debt	—	—	2,964	—
Accrued compensation expense for Put/Call Consideration	881	530	2,627	530
Goodwill impairment	—	817	—	817
Write-off of intangible assets	199	—	199	—
Acquisition-related costs	500	15	500	62
Restructuring and other severance costs	97	—	97	—
Certain litigation and other related costs	359	1,115	1,027	2,022
<b>Adjusted EBITDA</b>	<u>\$ 1,851</u>	<u>\$ 9,396</u>	<u>\$ 6,582</u>	<u>\$ 18,420</u>

Below is a reconciliation of adjusted net income and adjusted net income per share from net (loss) income, which we believe is the most directly comparable GAAP measure.

(In thousands, except share data)	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
<b>Net (loss) income</b>	\$ (5,179)	\$ 452	\$ (11,437)	\$ 860
Share-based compensation expense	1,201	1,281	2,432	3,678
Loss on early extinguishment of debt	—	—	2,964	—
Accrued compensation expense for Put/Call Consideration	881	530	2,627	530
Goodwill impairment	—	817	—	817
Write-off of intangible assets	199	—	199	—
Acquisition-related costs	500	15	500	62
Restructuring and other severance costs	97	—	97	—
Certain litigation and other related costs	359	1,115	1,027	2,022
<b>Adjusted net (loss) income</b>	\$ (1,942)	\$ 4,210	\$ (1,591)	\$ 7,969
<b>Adjusted net (loss) income per share:</b>				
Basic	\$ (0.02)	\$ 0.05	\$ (0.02)	\$ 0.10
Diluted	\$ (0.02)	\$ 0.05	\$ (0.02)	\$ 0.10
<b>Weighted average number of shares outstanding:</b>				
Basic	79,962,275	78,510,383	79,560,643	78,557,331
Diluted	79,962,275	78,666,776	79,560,643	78,905,792

We present media margin, adjusted EBITDA, adjusted net income and adjusted net income per share as supplemental measures of our financial and operating performance because we believe they provide useful information to investors. More specifically:

Media margin, as defined above, is a measure of the efficiency of the Company's operating model. We use media margin and the related measure of media margin as a percentage of revenue as primary metrics to measure the financial return on our media and related costs, specifically to measure the degree by which the revenue generated from our digital marketing services exceeds the cost to attract the consumers to whom offers are made through our services. Media margin is used extensively by our management to manage our operating performance, including evaluating operational performance against budgeted media margin and understanding the efficiency of our media and related expenditures. We also use media margin for performance evaluations and compensation decisions regarding certain personnel.

Adjusted EBITDA, as defined above, is another primary metric by which we evaluate the operating performance of our business, on which certain operating expenditures and internal budgets are based and by which, in addition to media margin and other factors, our senior management is compensated. The first three adjustments represent the conventional definition of EBITDA, and the remaining adjustments are items recognized and recorded under GAAP in particular periods but might be viewed as not necessarily coinciding with the underlying business operations for the periods in which they are so recognized and recorded. These adjustments include certain litigation and other related costs associated with legal matters outside the ordinary course of business, including costs and accruals related to the NY AG and FTC matters described below under Part II, Item 1 — Legal Proceedings. Items are considered one-time in nature if they are non-recurring, infrequent or unusual and have not occurred in the past two years or are not expected to recur in the next two years, in accordance with SEC rules. There were no adjustments for one-time items in the periods presented.

Adjusted net income, as defined above, and the related measure of adjusted net income per share exclude certain items that are recognized and recorded under GAAP in particular periods but might be viewed as not necessarily coinciding with the underlying business operations for the periods in which they are so recognized and recorded. We believe adjusted net income affords investors a different view of the overall financial performance of the Company than adjusted EBITDA and the GAAP measure of net (loss) income.

Media margin, adjusted EBITDA, adjusted net income and adjusted net income per share are not intended to be performance measures that should be regarded as an alternative to, or more meaningful than, net (loss) income as indicators of operating performance. None of these metrics are presented as measures of liquidity. The way we measure media margin, adjusted EBITDA and adjusted net income may not be comparable to similarly titled measures presented by other companies and may not be identical to corresponding measures used in our various agreements.



## Results of Operations

*Three months ended June 30, 2021 compared to three months ended June 30, 2020*

**Revenue.** Revenue increased \$1.9 million, or 3%, to \$73.4 million for the three months ended June 30, 2021, from \$71.5 million for the three months ended June 30, 2020. The increase was primarily attributable to relatively higher levels of monetization of consumer traffic overall and higher volumes of traffic sourced from major digital media platforms in the second quarter of 2021. This was somewhat offset by reduced volumes of affiliate traffic, stemming from our Traffic Quality Initiative, which sharply curtailed the volume of lower quality affiliate traffic. While the relatively higher levels of monetization and increased traffic from major digital media platforms in the second quarter of 2021 were sufficient to offset reduced traffic volume, resulting in higher revenue compared to the second quarter of 2020, these trends may or may not continue into the third quarter of 2021 as we continue to test and scale media spend for profitability. See discussion below under "Cost of revenue (exclusive of depreciation and amortization)." We ultimately anticipate higher volumes of traffic in future periods as we seek to replace the loss of lower quality affiliate traffic, though the timing of such increases remains uncertain.

At the onset of the continuing COVID-19 pandemic, certain advertisers in industry verticals such as staffing and recruitment and financial products and services exhibited reduced pricing and/or demand following the onset of the pandemic and subsequently recovered to varying degrees since that time. On the other hand, demand from certain advertisers in other verticals, such as streaming services and mobile gaming, increased during the pandemic and has since remained strong. In the three months ended June 30, 2021, with the proliferation of COVID-19 vaccinations in the U.S. during the second quarter, we saw a substantial recovery in the staffing and recruitment vertical. While changes in demand and pricing among clients in various industry verticals did not result in a significant disruption to our business, the trajectory of these trends is uncertain.

**Cost of revenue (exclusive of depreciation and amortization).** Cost of revenue increased \$7.6 million, or 16%, to \$56.6 million for the three months ended June 30, 2021, from \$49.0 million for the three months ended June 30, 2020. Our cost of revenue primarily consists of media and related costs associated with acquiring traffic from third-party publishers and digital media platforms for our owned and operated websites and, historically, on behalf of third-party advertisers, as well as the costs of fulfilling rewards earned by consumers who complete the requisite number of advertiser offers.

The total cost of revenue as a percentage of revenue increased to 77% for the three months ended June 30, 2021, compared to 69% in the corresponding period in 2020. In the normal course of executing paid media campaigns to source consumer traffic, we regularly test new channels, strategies and partners, in an effort to identify actionable opportunities which can then be optimized over time. Traffic acquisition costs incurred with the major digital media platforms from which we sourced increased traffic volumes have historically been higher than affiliate traffic sources. Through our Traffic Quality Initiative, we substantially curtailed the volume of lower quality affiliate traffic that we source. To replace this lower quality traffic, we are testing and scaling various media channels, strategies and partners to generate consumer traffic meeting our quality requirements. Some of these strategies tested in the second quarter of 2021 involved increased media spend with major digital media platforms and revised bidding strategies for affiliate traffic, each of which were expected to yield lower margins, with the intent is to optimize spend for improved profitability in future periods. The mix and profitability of our media channels, strategies and partners is likely to be dynamic and reflect evolving market dynamics and the impact of our Traffic Quality Initiative. As we test and scale new media channels, strategies and partners, we may determine that certain sources initially able to provide us profitable quality traffic may not be able to maintain our quality standards over time, and we may need to discontinue, or direct a modification of the practices of, such sources, which could reduce profitability. However, we believe the Traffic Quality Initiative will benefit the Company over time, providing the foundation to support sustainable long-term growth and positioning us as an industry leader. Past levels of cost of revenue (exclusive of depreciation and amortization) may therefore not be indicative of future costs, which may increase or decrease as these uncertainties in our business play out.

**Sales and marketing.** Sales and marketing expenses increased \$0.1 million, or 4%, to \$3.0 million for the three months ended June 30, 2021, from \$2.9 million for the three months ended June 30, 2020. For the three months ended June 30, 2021 and 2020, the amounts consisted mainly of employee salaries and benefits of \$2.6 million and \$2.4 million, non-cash share-based compensation expense of \$0.2 and \$0.3 million, and advertising costs of \$0.1 and \$0.2 million, respectively. As business travel and in-person meetings and events begin to resume, we anticipate that our sales and marketing expenditures may increase in future periods. As a result, past levels of sales and marketing expenditures may not be indicative of future expenditures, which may increase or decrease as these uncertainties in our business play out.

**Product development.** Product development increased \$0.3, or 10%, to \$3.4 million for the three months ended June 30, 2021, from \$3.1 million for the three months ended June 30, 2020. For the three months ended June 30, 2021 and 2020, the amounts consisted mainly of salaries and benefits of \$2.4 million and \$2.2 million, software license and maintenance costs of \$0.3 million and \$0.3 million, professional fees of \$0.3 million and \$0.1 million, and non-cash share-based compensation expense of \$0.2 million and \$0.3 million, respectively. The increase in product development expenses reflects, in part, the development of new app-based media properties, expanding beyond our traditional focus on web-based media properties.

**General and administrative.** General and administrative expenses increased \$1.5 million, or 15%, to \$11.5 million for the three months ended June 30, 2021, from \$10.0 million for the three months ended June 30, 2020. For the three months ended June 30, 2021 and 2020, the amounts consisted mainly of employee salaries and benefits of \$5.0 million and \$4.3 million, professional fees of \$1.2 million and \$1.2 million, office overhead of \$1.1 million and \$1.2 million, software license and maintenance costs of \$0.9 million and \$0.4 million, accrued compensation expense for Put/Call Consideration from the Winopoly Acquisition of \$0.9 million and \$0.5 million (see Note 11, *Business acquisition*, in the Notes to Consolidated Financial Statements), non-cash share-based compensation expense of \$0.8 million and \$0.7 million, acquisition-related costs of \$0.5 million and \$0.0 million, and certain litigation and related costs of \$0.4 million and \$1.1 million, respectively. The increase was mainly the result of increased employee salaries and benefits, acquisition related costs related to Winopoly, and accrued compensation expense for the Winopoly Put/Call Consideration, partially offset by reduced litigation and related costs.

**Depreciation and amortization.** Depreciation and amortization expenses decreased \$0.5 million, or 13%, to \$3.4 million for the three months ended June 30, 2021, from \$3.9 million for the three months ended June 30, 2020.

**Write-off of intangible assets.** During the three months ended June 30, 2021, we recognized \$0.2 million of write-off of intangible assets related to software developed for internal use, with no corresponding charge in the prior period.

**Interest expense, net.** Interest expense, net, decreased \$0.9 million, or 68%, to \$0.4 million for the three months ended June 30, 2021, from \$1.3 million for the three months ended June 30, 2020. The decrease was attributable to a lower interest rate on the New Credit Facility Term Loan as compared to the Refinanced Term Loan.

**(Loss) income before income taxes.** For the three months ended June 30, 2021, net loss before income taxes was \$5.2 million, compared to net income before income taxes of \$0.5 million for the three months ended June 30, 2020. The decrease of \$5.6 million was primarily due to an increase in cost of revenue of \$7.6 million, an increase in general and administrative expense of \$1.5 million, an increase in product development of \$0.3 million, and an increase in sales and marketing of \$0.1 million, partially offset by an increase in revenue of \$1.9 million, a decrease in interest expense of \$0.9 million and a decrease in depreciation and amortization expense of \$0.5 million, as discussed above.

**Income taxes.** There was no income tax recorded for the three months ended June 30, 2021 and 2020, respectively.

As of June 30, 2021 and 2020, we recorded a full valuation allowance against our net deferred tax assets. We intend to maintain a full valuation allowance against the net deferred tax assets until there is sufficient evidence to support the release of all or some portion of this allowance. Based on various factors, including our history of losses, current income, estimated future taxable income, exclusive of reversing temporary differences and carryforwards, future reversals of existing taxable temporary differences and consideration of available tax planning strategies, we believe there is a reasonable possibility that, within the next twelve months, sufficient positive evidence may become available to allow us to reach a conclusion that a significant portion of the valuation allowance may be released. Release of some or all of the valuation allowance would result in the recognition of certain deferred tax assets and an increase in deferred tax benefit for any period in which such a release may be recorded, however, the exact timing and amount of any valuation allowance release are subject to change, depending on the profitability that we are able to achieve and the net deferred tax assets available.

**Net (loss) income.** Net loss of \$5.2 million and net income of \$0.5 million were recognized for the three months ended June 30, 2021 and 2020, respectively, as a result of the foregoing.

*Six months ended June 30, 2021 compared to six months ended June 30, 2020*

**Revenue.** Revenue decreased \$6.9 million, or 5%, to \$143.5 million for the six months ended June 30, 2021, from \$150.4 million for the six months ended June 30, 2020. The decrease was primarily attributable to reduced volumes of affiliate traffic, stemming from our Traffic Quality Initiative, which sharply curtailed the volume of lower quality affiliate traffic, somewhat offset by higher levels of monetization of consumer traffic overall and higher volumes of traffic sourced from major digital media platforms. Relatively higher levels of monetization and increased traffic from major digital media platforms in the first six months of 2021 were not sufficient to offset reduced affiliate traffic volume, resulting in lower revenue compared to the first six months of 2020.

**Cost of revenue (exclusive of depreciation and amortization).** Cost of revenue increased \$2.0 million, or 2%, to \$107.6 million for the six months ended June 30, 2021, from \$105.6 million for the six months ended June 30, 2020.

The total cost of revenue as a percentage of revenue increased to 75% for the six months ended June 30, 2021, compared to 70% in the corresponding period in 2020 with the increase due to the traffic acquisition factors discussed above.

**Sales and marketing.** Sales and marketing expenses increased \$0.2 million, or 4%, to \$6.0 million for the six months ended June 30, 2021, from \$5.7 million for the six months ended June 30, 2020. For the six months ended June 30, 2021 and 2020, the amounts consisted mainly of employee salaries and benefits of \$5.1 million and \$4.6 million, non-cash share-based compensation expense of \$0.4 and \$0.5 million, and advertising costs of \$0.3 and \$0.4 million, respectively.

**Product development.** Product development increased \$1.0, or 17%, to \$6.9 million for the six months ended June 30, 2021, from \$5.8 million for the six months ended June 30, 2020. For the six months ended June 30, 2021 and 2020, the amounts consisted mainly of salaries and benefits of \$5.0 million and \$4.4 million, software license and maintenance costs of \$0.7 million and \$0.4 million, non-cash share-based compensation expense of \$0.5 million and \$0.5 million, and professional fees of \$0.5 million and \$0.2 million, respectively. The increase in product development expenses reflects, in part, the development of new app-based media properties, expanding beyond our traditional focus on web-based media properties.

**General and administrative.** General and administrative expenses increased \$2.1 million, or 10%, to \$23.2 million for the six months ended June 30, 2021, from \$21.1 million for the six months ended June 30, 2020. For the six months ended June 30, 2021 and 2020, the amounts consisted mainly of employee salaries and benefits of \$9.9 million and \$8.8 million, professional fees of \$2.7 million and \$2.5 million, accrued compensation expense for Put/Call Consideration from the Winopoly Acquisition of \$2.6 million and \$0.5 million (see Note 11, *Business acquisition*, in the Notes to Consolidated Financial Statements), office overhead of \$2.2 million and \$2.0 million, non-cash share-based compensation expense of \$1.6 million and \$2.7 million, IT and website related costs of \$1.5 million and \$0.7 million, certain litigation and related costs of \$1.0 million and \$2.0 million, and acquisition-related costs of \$0.5 million and \$0.1 million, respectively. The increase was mainly the result of accrued compensation expense for the Winopoly Put/Call Consideration, IT and IT website costs and increased employee salaries and benefits, partially offset by a decline in non-cash share based compensation expense and reduced litigation and other costs.

**Depreciation and amortization.** Depreciation and amortization expenses decreased \$0.8 million, or 11%, to \$6.7 million for the six months ended June 30, 2021, from \$7.6 million for the six months ended June 30, 2020.

**Goodwill impairment.** During the six months ended June 30, 2020, we recognized \$0.8 million of goodwill impairment related to the All Other reporting unit, with no corresponding impairment charge in the current period.

**Write-off of intangible assets.** During the six months ended June 30, 2021, we recognized \$0.2 million of a write-off of intangible assets related to software developed for internal use, with no corresponding charge in the prior period.

**Interest expense, net.** Interest expense, net, decreased \$1.4 million, or 50%, to \$1.4 million for the six months ended June 30, 2021, from \$2.9 million for the six months ended June 30, 2020. The decrease was attributable to a lower interest rate on the New Credit Facility Term Loan as compared to the Refinanced Term Loan.

**Loss on early extinguishment of debt.** During the six months ended June 30, 2021, we recognized \$3.0 million of loss due to the early extinguishment of debt, described below under "Liquidity and Capital Resources," with no corresponding charge in the prior period.

**(Loss) income before income taxes.** For the six months ended June 30, 2021, loss before income taxes was \$11.4 million, compared to net income before income taxes of \$0.9 million for the six months ended June 30, 2020. The decrease of \$12.3 million was primarily due to a decrease in revenue of \$6.9 million, the loss on early extinguishment of debt recorded in the first quarter of 2021 of \$3.0 million, an increase in product development of \$1.0 million, an increase in general and administrative expense of \$2.1 million and an increase in sales and marketing of \$0.2 million, partially offset by a decrease in cost of revenue of \$2.0 million, a decrease in interest expense of \$1.4 million and a decrease in depreciation and amortization expense of \$0.8 million, as discussed above.

**Income taxes.** There was a \$1 and \$0 income tax benefit for the six months ended June 30, 2021 and 2020, respectively.

**Net (loss) income.** Net loss of \$11.4 million and net income of \$0.9 million were recognized for the six months ended June 30, 2021 and 2020, respectively, as a result of the foregoing.

## Liquidity and Capital Resources

**Cash flows (used in) provided by operating activities.** For the six months ended June 30, 2021, net cash used in operating activities was \$0.7 million and for the six months ended June 30, 2020, net cash provided by operating activities was and \$9.8 million. Net loss in the current period of \$11.4 million represents a decrease of \$12.3 million, as compared with net income of \$0.9 million in the prior period. Adjustments to reconcile net income to net cash used in operating activities of \$14.6 million in the current period increased by \$1.2 million, as compared with \$13.4 million in the prior period, primarily due to the inclusion of a non-cash loss on early extinguishment of debt and accrual for Put/Call Consideration in the current period, partially offset by reductions in share-based compensation expense, depreciation and provision for bad debt. Changes in assets and liabilities consumed cash of \$3.8 million in the current period, as compared with consuming cash of \$4.5 million in the prior period, primarily due to ordinary-course changes in working capital.

**Cash flows used in investing activities.** For the six months ended June 30, 2021 and 2020, net cash used in investing activities was \$1.6 million and \$2.7 million, respectively. The decrease was mainly due to the Winopoly business acquisition that occurred in the prior year.

**Cash flows provided by (used in) financing activities.** Net cash provided by financing activities for the six months ended June 30, 2021 was \$6.3 million and net cash used in financing activities was \$5.6 million for the prior period. The increase of \$11.9 million in cash provided by financing activities in the current period was mainly due to the net proceeds from issuance of long-term debt of \$49.6 million, the repurchase of stock as part of a stock repurchase program in the prior period of \$1.3 million, and the exercise of stock options by a former key executive of \$0.9 million, partially offset by an increase in the repayment of long-term debt of \$39.1 million, the prepayment penalty on early debt extinguishment of \$0.8 million and an increase in statutory taxes paid related to the net share settlement of vested restricted stock units of \$0.3 million.

As of June 30, 2021, we had noncancelable operating lease commitments of \$9.6 million and long-term debt with \$50.0 million principal balance. For the six months ended June 30, 2021, we funded our operations using available cash.

As of June 30, 2021, we had cash, cash equivalents and restricted cash of approximately \$26.6 million, an increase of \$4.0 million from \$22.6 million as of December 31, 2020. We believe that we will have sufficient cash resources to finance our operations and expected capital expenditures for the next twelve months and beyond.

We may explore the possible acquisition of businesses, products and/or technologies that are complementary to our existing business. We are continuing to identify and prioritize additional technologies, which we may wish to develop internally or through licensing or acquisition from third parties. While we may engage from time to time in discussions with respect to potential acquisitions, there can be no assurances that any such acquisitions will be made or that we will be able to successfully integrate any acquired business. In order to finance such acquisitions and working capital, it may be necessary for us to raise additional funds through public or private financings. Any equity or debt financings, if available at all, may be on terms which are not favorable to us and, in the case of equity financings, may result in dilution to shareholders. On April 1, 2020, we acquired a 50% membership interest in Winopoly, LLC, for a deemed purchase price of \$2.6 million, comprised of \$1.6 million in upfront cash paid to the seller parties and contingent consideration with a fair value of \$1.0 million, payable based upon the achievement of specified revenue targets over the eighteen-month period following the completion of the acquisition. See Note 11, *Business acquisition*, in the Notes to Consolidated Financial Statements.

During the first quarter of 2021, Fluent, LLC redeemed \$38.3 million aggregate principal amount of our Refinanced Term Loan due March 26, 2023, prior to maturity, resulting in a loss of \$2,964 as a cost of early extinguishment of debt.

On March 31, 2021, Fluent, LLC entered into a credit agreement (the "Credit Agreement") by and among, Fluent, LLC, certain subsidiaries of Fluent, LLC as guarantors, Citizens Bank, N.A., as administrative agent, lead arranger and bookrunner, and BankUnited, N.A. and Silicon Valley Bank. The Credit Agreement provides for a term loan in the aggregate principal amount of \$50.0 million funded on the Closing Date (the "Term Loan"), along with an undrawn revolving credit facility of up to \$15.0 million (the "Revolving Loans," and together with the Term Loan, the "New Credit Facility"). As of June 30, 2021, the Credit Agreement has an outstanding principal balance of \$48.8 million and matures on March 31, 2026. Principal amortization of the Credit Agreement is \$1.3 million per quarter, which commenced with the fiscal quarter ended June 30, 2021.

Borrowings under the Credit Agreement bear interest at a rate per annum equal to an applicable margin, plus, at the Company's option, either a base rate or a London Inter-bank Offered Rate ("LIBOR") rate (subject to a floor of 0.25%). The applicable margin is between 0.75% and 1.75% for base rate borrowings and 1.75% and 2.75% for LIBOR rate borrowings, depending upon the Company' consolidated leverage ratio. The anticipated opening interest rate of the New Credit Facility is 2.50% (LIBOR + 2.25%).

The Credit Agreement contain restrictive covenants which impose limitations on the way we conduct our business, including limitations on the amount of additional debt we are able to incur and our ability to make certain investments and other restricted payments. The restrictive covenants may limit our strategic and financing options and our ability to return capital to our shareholders through dividends or stock buybacks. Furthermore, we may need to incur additional debt to meet future financing needs. The Credit Agreement is guaranteed by us and our direct and indirect subsidiaries and is secured by substantially all of our assets and those of our direct and indirect subsidiaries, including Fluent, LLC, in each case, on an equal and ratable basis.

The Credit Agreement requires us to maintain and comply with certain financial and other covenants. While we were in compliance with the financial and other covenants at June 30, 2021, we cannot guarantee that we will be able to maintain compliance with such financial or other covenants in future periods. Our failure to comply with these covenants could result in an event of default which, if not cured or waived, could result in the acceleration of all of our indebtedness, which would materially adversely affect our financial health if we are unable to access sufficient funds to repay all the outstanding amounts. Moreover, if we are unable to meet our debt obligations as they come due, we could be forced to restructure or refinance such obligations, seek additional equity financing or sell assets, which we may not be able to do on satisfactory terms, or at all.

## **Off-Balance Sheet Arrangements**

As of June 30, 2021, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K.

## **Critical Accounting Policies and Estimates**

Management's discussion and analysis of financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States ("US GAAP"). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We periodically evaluate our estimates, including those related to revenue recognition, allowance for doubtful accounts, useful lives of intangible assets, recoverability of the carrying amounts of goodwill and intangible assets, share-based compensation and income taxes. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

During the three months ended March 31, 2021, we determined that the reduction in operating results of the Fluent reporting unit, along with a decline in the market value of its publicly-traded stock, collectively constituted a triggering event. As such, we conducted an interim test of the fair value of its goodwill for potential impairment as of March 31, 2021. Based on the results of this interim impairment test, which used a combination of the income and market approaches to determine the fair value of the Fluent reporting unit, we concluded its goodwill of \$160.9 million was not impaired since the results of the interim test indicated that the estimated fair value exceeded its carrying value by approximately 17%. We believe that the assumptions utilized in its interim impairment testing, including the determination of an appropriate discount rate of 14.5%, long-term profitability growth projections, and estimated future cash flows, are reasonable. The risk of future impairment of goodwill exists if actual results, such as lower than expected revenue, profitability, cash flows, market multiples, discount rates and control premiums, differ from the assumptions used in our interim impairment test.

For additional information, please refer to our 2020 Form 10-K. There have been no additional material changes to Critical Accounting Policies and Estimates disclosed in the 2020 Form 10-K.

### *Recently issued accounting and adopted standards*

See Note 1(b), "*Recently issued and adopted accounting standards*," in the Notes to Consolidated Financial Statements.

## **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

As a smaller reporting company, we are not required to provide the information required by this Item.

## **Item 4. Controls and Procedures.**

### **Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our principal executive officer and principal financial officer, 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 Exchange Act) as of June 30, 2021. We maintain disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Based on the evaluation of disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934), the Company's principal executive officer and principal financial officer concluded that the Company's disclosure controls and procedures were effective as of June 30, 2021. Management believes the consolidated financial statements included in this Quarterly Report on Form 10-Q fairly represent in all material respects our financial condition, results of operations and cash flows at and for the periods presented in accordance with U.S. GAAP.

### **Changes in Internal Control Over Financial Reporting**

There were no changes to our internal control over financial reporting during this quarter ended June 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II - OTHER INFORMATION

### Item 1. Legal Proceedings.

Other than as disclosed below under "—Certain Legal Matters," the Company is not currently a party to any legal proceeding, investigation or claim which, in the opinion of the management, is likely to have a material adverse effect on the business, financial condition, results of operations or cash flows. Legal fees associated with legal proceedings are expensed as incurred. We review legal proceedings and claims on an ongoing basis and follow appropriate accounting guidance, including ASC 450, when making accrual and disclosure decisions. We establish accruals for those contingencies where the incurrence of a loss is probable and can be reasonably estimated, and we disclose the amount accrued and the amount of a reasonably possible loss in excess of the amount accrued, if such disclosure is necessary for our financial statements to not be misleading. To estimate whether a loss contingency should be accrued by a charge to income, we evaluate, among other factors, the probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of the loss. We do not record liabilities when the likelihood that the liability has been incurred is probable, but the amount cannot be reasonably estimated.

In addition, we may be involved in litigation from time to time in the ordinary course of business. We do not believe that the ultimate resolution of any such matters will have a material adverse effect on our business, financial condition, results of operations or cash flows. However, the results of such matters cannot be predicted with certainty and we cannot assure you that the ultimate resolution of any legal or administrative proceeding or dispute will not have a material adverse effect on our business, financial condition, results of operations and cash flows.

#### *Certain Legal Matters*

On October 26, 2018, the Company received a subpoena from the New York Attorney General's Office ("NY AG") regarding compliance with New York Executive Law § 63(12) and New York General Business Law § 349, as they relate to the collection, use, or disclosure of information from or about consumers or individuals, as such information was submitted to the Federal Communication Commission ("FCC") in connection with the FCC's rulemaking proceeding captioned "Restoring Internet Freedom," WC Docket No. 17-108. On May 6, 2021, the Company and the NY AG executed an Assurance of Discontinuance (the "AOD") to resolve this matter. The AOD imposed injunctive provisions on the Company's practices with regard to political advocacy campaigns, most of which the Company had already implemented, and imposed a \$3.7 million penalty, which was in line with the Company's accrual in the prior quarter and paid in full as of June 30, 2021.

On December 13, 2018, the Company received a subpoena from the United States Department of Justice ("DOJ") regarding the same issue. On March 12, 2020, the Company received a subpoena from the Office of the Attorney General of the District of Columbia ("DC AG") regarding the same issue. The Company was responsive and fully cooperated with each of the DOJ and the DC AG.

On June 27, 2019, as a part of two sales and use tax audits covering the period from December 1, 2010 to November 30, 2019, the New York State Department of Taxation and Finance (the "Tax Department") issued a letter stating its position that revenue derived from certain of the Company's customer acquisition and list management services are subject to sales tax, as a result of being deemed information services. The Company disputed the Tax Department's position on several grounds, but on January 14 and 15, 2020, the Tax Department issued Statements of Proposed Audit Adjustment totaling \$8.2 million, including \$2.0 million of interest. The Company formally disagreed with the amount of the Proposed Audit Adjustments and met with the Tax Department on March 4, 2020. During that meeting, the Company informed the Tax Department that a majority of the Proposed Audit Adjustments was attributable to revenue derived from transfers which were either excluded resales or sourced outside of New York and renewed its challenge as to the taxability of its customer acquisition revenue. On July 22 and 31, 2020, the Company received notices of determination from the Tax Department totaling \$3.0 million, including \$0.7 million of interest. On October 16, 2020, the Company filed challenges to the notices of determination. On June 21, 2021, the Company and the Tax Department participated in a conciliation conference, but the audits were not resolved. Based on the foregoing, the Company believes it is probable that a sales tax liability may result from this matter, and has estimated the range of any such liability to be between \$0.7 million and \$3.0 million. The Company has accrued a liability associated with these sales and use tax audits at the low end of this range.

On January 28, 2020, the Company received a Civil Investigative Demand ("CID") from the FTC regarding compliance with the FTC Act or the TSR, as they relate to the advertising, marketing, promotion, offering for sale, or sale of rewards and other products, the transmission of commercial text messages, and/or consumer privacy or data security. The Company has been responsive and is fully cooperating with the FTC. At this time, it is not possible to predict the ultimate outcome of this matter or the significance, if any, to our business, results of operations or financial position.

### Item 1A. Risk Factors.

Our business, financial condition, results of operations, and cash flows may be impacted by a number of factors, many of which are beyond our control, including those set forth in our 2020 Form 10-K, the occurrence of any one of which could have a material adverse effect on our actual results.

There have been no material changes to the Risk Factors previously disclosed in our 2020 Form 10-K.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

**Issuer Purchase of Equity Securities**

The table below sets forth the information with respect to purchases made by or on behalf of the Company of its common stock during the second quarter of 2021.

Period	Total Number of Shares Purchased(1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs(2)	Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs
April 1-30, 2021	—	—	—	—
May 1-31, 2021	—	—	—	—
June 1-30, 2021	13,821	2.99	—	—

(1) During April 2021, May 2021 and June 2021, 0 shares, 0 shares and 13,821 shares, respectively (totaling 13,821 shares), were purchased to satisfy federal and state withholding obligations of our employees upon the settlement of restricted stock units, all in accordance with the applicable equity incentive plan.

(2) In November 2019, our board of directors authorized and we announced a stock repurchase program which allowed for the repurchase of up to \$5.0 million of our common stock in the open market or through privately-negotiated transactions. This authorization expired as of December 31, 2020.

**Item 3. Defaults Upon Senior Securities.**

None.

**Item 4. Mine Safety Disclosures.**

Not Applicable.

**Item 5. Other Information.**

None.

**Item 6. Exhibits.**

The following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Exhibit No.	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	<a href="#">Certificate of Incorporation</a>	8-K	001-37893	3.2	3/26/2015	
3.2	<a href="#">Certificate of Amendment to the Certificate of Incorporation.</a>	8-K	001-37893	3.1	4/16/2018	
3.3	<a href="#">Amended and Restated Bylaws.</a>	8-K	001-37893	3.2	2/19/2019	
4.1	<a href="#">Form of Common Stock Certificate.</a>	8-K	001-37893	4.1	4/16/2018	
31.1	<a href="#">Certification of Chief Executive Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>					X
31.2	<a href="#">Certification of Chief Financial Officer filed pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>					X
32.1*	<a href="#">Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>					X
32.2*	<a href="#">Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>					X
101.INS	Inline XBRL Instance Document (the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					
*	This certification is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, as amended (Exchange Act), or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended or the Exchange Act.					





**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

August 9, 2021

Fluent, Inc.

By: /s/ Alexander Mandel  
Alexander Mandel  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

## CERTIFICATIONS

I, Donald Patrick, certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q of Fluent, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 9, 2021

By: /s/ Donald Patrick  
Donald Patrick  
Interim Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATIONS

I, Alex Mandel, certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q of Fluent, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 9, 2021

By: /s/ Alex Mandel  
Alex Mandel  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT  
TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Fluent, Inc. for the quarter ended June 30, 2021 (the "Report"), the undersigned hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge and belief, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Fluent, Inc.

August 9, 2021

By: /s/ Donald Patrick  
Donald Patrick  
Interim Chief Executive Officer  
(Principal Executive Officer)

The certification set forth above is being furnished as an Exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Report or as a separate disclosure document of Fluent, Inc. or the certifying officers.

**CERTIFICATION PURSUANT  
TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the accompanying Quarterly Report on Form 10-Q of Fluent, Inc. for the quarter ended June 30, 2021 (the "Report"), the undersigned hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge and belief, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Fluent, Inc.

August 9, 2021

By: /s/ Alex Mandel  
Alex Mandel  
Chief Financial Officer  
(Principal Financial and Accounting  
Officer)

The certification set forth above is being furnished as an Exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Report or as a separate disclosure document of Fluent, Inc. or the certifying officers.