UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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 September 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	**77-0688094**
(State or other jurisdiction of incorporation or organization)	**(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	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☒
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 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 November 2, 2021, the registrant had 78,945,304 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)

	September 30, 2021	December 31, 2020
ASSETS:		
Cash and cash equivalents	$ 15,615	$ 21,087
Accounts receivable, net of allowance for doubtful accounts of $342 and $368, respectively	76,568	62,669
Prepaid expenses and other current assets	2,208	2,435
Total current assets	94,391	86,191
Restricted cash	1,480	1,480
Property and equipment, net	1,641	2,201
Operating lease right-of-use assets	7,033	8,284
Intangible assets, net	38,053	45,417
Goodwill	165,088	165,088
Other non-current assets	1,857	1,559
Total assets	$ 309,543	$ 310,220
LIABILITIES AND SHAREHOLDERS' EQUITY:		
Accounts payable	$ 16,185	$ 7,692
Accrued expenses and other current liabilities	28,884	31,568
Deferred revenue	722	1,373
Current portion of long-term debt	5,000	7,293
Current portion of operating lease liability	2,202	2,291
Total current liabilities	52,993	50,217
Long-term debt, net	41,507	33,283
Operating lease liability	5,992	7,290
Other non-current liabilities	673	2,545
Total liabilities	101,165	93,335
Contingencies (see Note 10)		
Shareholders' equity:		
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 — 83,018,418 and 80,295,141, respectively; and Shares outstanding — 78,928,638 and 76,349,274, respectively	42	40
Treasury stock, at cost — 4,089,780 and 3,945,867 Shares, respectively	(10,718)	(9,999)
Additional paid-in capital	417,852	411,753
Accumulated deficit	(198,798)	(184,909)
Total shareholders' equity	208,378	216,885
Total liabilities and shareholders' equity	$ 309,543	$ 310,220

See notes to consolidated financial statements

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	**2020**	**2021**	**2020**
Revenue	$ 85,858	$ 78,280	$ 229,406	$ 228,723
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization)	63,784	52,771	171,379	158,402
Sales and marketing	3,034	2,925	8,995	8,643
Product development	4,464	3,355	11,331	9,201
General and administrative	13,279	12,772	36,505	33,892
Depreciation and amortization	3,200	3,906	9,939	11,492
Goodwill impairment and write-off of intangible assets	144	—	343	817
Total costs and expenses	87,905	75,729	238,492	222,447
(Loss) income from operations	(2,047)	2,551	(9,086)	6,276
Interest expense, net	(405)	(1,317)	(1,840)	(4,182)
Loss on early extinguishment of debt	—	—	(2,964)	—
(Loss) income before income taxes	(2,452)	1,234	(13,890)	2,094
Income tax benefit (expense)	—	(65)	1	(65)
Net (loss) income	$ (2,452)	$ 1,169	$ (13,889)	$ 2,029
Basic and diluted (loss) income per share:				
Basic	$ (0.03)	$ 0.01	$ (0.17)	$ 0.03
Diluted	$ (0.03)	$ 0.01	$ (0.17)	$ 0.03
Weighted average number of shares outstanding:				
Basic	80,133,406	78,577,974	79,753,662	78,564,262
Diluted	80,133,406	79,172,578	79,753,662	79,214,619

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			
Balance at June 30, 2021	82,440,259	$ 41	4,068,832	$ (10,666)	$ 415,325	$ (196,346)	$ 208,354
Vesting of restricted stock units and issuance of stock under incentive plans	578,159	1	—	—	1,359	—	1,360
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	20,948	(52)	—	—	(52)
Exercise of stock options	—	—	—	—	—	—	—
Share-based compensation	—	—	—	—	1,168	—	1,168
Net loss	—	—	—	—	—	(2,452)	(2,452)
Balance at September 30, 2021	83,018,418	$ 42	4,089,780	$ (10,718)	$ 417,852	$ (198,798)	$ 208,378
Balance at December 31, 2020	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	2,525,277	2	—	—	1,494	—	1,496
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	143,913	(719)	—	—	(719)
Exercise of stock options	198,000	—	—	—	934	—	934
Share-based compensation	—	—	—	—	3,671	—	3,671
Net loss	—	—	—	—	—	(13,889)	(13,889)
Balance at September 30, 2021	83,018,418	$ 42	4,089,780	$ (10,718)	$ 417,852	$ (198,798)	$ 208,378

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Total shareholders' equity
	Shares	Amount	Shares	Amount			
Balance at June 30, 2020	79,908,985	$ 40	3,616,398	$ (9,930)	$ 409,961	$ (186,256)	$ 213,815
Vesting of restricted stock units and issuance of restricted stock	51,490	—	—	—	—	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	20,357	(44)	—	—	(44)
Exercise of warrants by certain warrant holders (see Note 7)	300,000	—	300,000	—	—	—	—
Share-based compensation	—	—	—	—	1,204	—	1,204
Net income	—	—	—	—	—	1,169	1,169
Balance at September 30, 2020	80,260,475	$ 40	3,936,755	$ (9,974)	$ 411,165	$ (185,087)	$ 216,144
Balance at December 31, 2019	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	1,618,397	1	—	—	(1)	—	—
Increase in treasury stock resulting from shares withheld to cover statutory taxes	—	—	210,683	(490)	—	—	(490)
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	—	—	—	—	4,968	—	4,968
Net income	—	—	—	—	—	2,029	2,029
Balance at September 30, 2020	80,260,475	$ 40	3,936,755	$ (9,974)	$ 411,165	$ (185,087)	$ 216,144

See notes to consolidated financial statements

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

	Nine Months Ended September 30,	
	2021	2020
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net (loss) income	$ (13,889)	$ 2,029
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Depreciation and amortization	9,939	11,492
Non-cash loan amortization expense	361	1,092
Share-based compensation expense	3,577	4,848
Non-cash loss on early extinguishment of debt	2,198	—
Non-cash accrued compensation expense for Put/Call Consideration	3,213	1,184
Non-cash termination of Put/Call Consideration	(629)	—
Goodwill impairment	—	817
Write-off of intangible assets	343	—
Provision for bad debt	113	174
Provision for income taxes	—	65
Changes in assets and liabilities, net of business acquisition:		
Accounts receivable	(14,012)	1,363
Prepaid expenses and other current assets	227	(957)
Other non-current assets	(298)	(859)
Operating lease assets and liabilities, net	(136)	(119)
Accounts payable	8,493	(14,096)
Accrued expenses and other current liabilities	(5,685)	4,622
Deferred revenue	(651)	1,300
Other	(96)	(94)
Net cash (used in) provided by operating activities	(6,932)	12,861
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capitalized costs included in intangible assets	(2,237)	(1,943)
Business acquisition, net of cash acquired	—	(1,426)
Acquisition of property and equipment	(26)	(62)
Net cash used in investing activities	(2,263)	(3,431)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of long-term debt, net of debt financing costs	49,624	—
Repayments of long-term debt	(45,486)	(10,925)
Exercise of stock options	934	—
Prepayment penalty on debt extinguishment	(766)	—
Taxes paid related to net share settlement of vesting of restricted stock units	(719)	(490)
Proceeds from the issuance of stock	136	—
Repurchase of treasury stock	—	(1,300)
Net cash provided by (used in) financing activities	3,723	(12,715)
Net decrease in cash, cash equivalents and restricted cash	(5,472)	(3,285)
Cash, cash equivalents and restricted cash at beginning of period	22,567	20,159
Cash, cash equivalents and restricted cash at end of period	$ 17,095	$ 16,874
SUPPLEMENTAL DISCLOSURE INFORMATION		
Cash paid for interest	$ 1,413	$ 2,978
Cash paid for income taxes	$ 356	$ 300
Share-based compensation capitalized in intangible assets	$ 94	$ 120

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. From April 1, 2020 through August 31, 2021, the Company had 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*). Beginning September 1, 2021, Winopoly is a wholly owned subsidiary of the Company.

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 September 30, 2021 and December 31, 2020, the balance of deferred revenue was $722 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 September 30, 2021 and December 31, 2020, unbilled revenue included in accounts receivable was $27,692 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 consideration, 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 nine months ended September 30, 2021 and 2020, basic and diluted (loss) income per share was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	**2020**	**2021**	**2020**
Numerator:				
Net (loss) income	$ (2,452)	$ 1,169	$ (13,889)	$ 2,029
Denominator:				
Weighted average shares outstanding	78,441,740	76,315,973	77,866,621	76,111,405
Weighted average restricted shares vested not delivered	1,691,666	2,262,001	1,887,041	2,452,857
Total basic weighted average shares outstanding	80,133,406	78,577,974	79,753,662	78,564,262
Dilutive effect of assumed conversion of restricted stock units	—	594,604	—	650,357
Total diluted weighted average shares outstanding	80,133,406	79,172,578	79,753,662	79,214,619
Basic and diluted (loss) income per share:				
Basic	$ (0.03)	$ 0.01	$ (0.17)	$ 0.03
Diluted	$ (0.03)	$ 0.01	$ (0.17)	$ 0.03

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:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	**2020**	**2021**	**2020**
Restricted stock units	2,814,788	1,589,498	2,814,788	1,639,561
Stock options	2,204,000	2,509,000	2,204,000	2,509,000
Warrants	833,333	833,333	833,333	833,333
Total anti-dilutive securities	5,852,121	4,931,831	5,852,121	4,981,894

3. Intangible assets, net

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

	Amortization period (in years)	September 30, 2021	December 31, 2020
Gross amount:			
Software developed for internal use	3	$ 8,963	$ 7,376
Acquired proprietary technology	3-5	14,845	14,788
Customer relationships	5-10	37,885	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
Total gross amount		111,601	109,958
Accumulated amortization:			
Software developed for internal use		(4,811)	(3,551)
Acquired proprietary technology		(13,169)	(12,474)
Customer relationships		(28,626)	(24,657)
Trade names		(4,922)	(4,252)
Domain names		(55)	(48)
Databases		(20,197)	(17,791)
Non-competition agreements		(1,768)	(1,768)
Total accumulated amortization		(73,548)	(64,541)
Net intangible assets:			
Software developed for internal use		4,152	3,825
Acquired proprietary technology		1,676	2,314
Customer relationships		9,259	13,229
Trade names		11,735	12,405
Domain names		136	143
Databases		11,095	13,501
Total intangible assets, net		$ 38,053	$ 45,417

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 "Initial Winopoly Acquisition"), effective April 1, 2020 (see Note 11, *Business acquisition*). In connection with the Initial Winopoly Acquisition, the Company recorded 100% equity ownership for GAAP purposes, and no further intangible assets were acquired in connection with the Full Winopoly Acquisition described in 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 estimation of future cash flows, were reasonable. The Company completed its quarterly triggering event assessments for the three months ended June 30, 2021 and September 30, 2021 and has determined that no triggering event had occurred requiring further impairment assessments for its long lived assets.

Amortization expense of $3,006 and $3,711 for the three months ended September 30, 2021 and 2020, respectively, and $9,352 and $10,917, for the nine months ended September 30, 2021 and 2020, respectively, is included in depreciation and amortization expenses in the consolidated statements of operations. As of September 30, 2021, intangible assets with a carrying amount of $592, 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 September 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	September 30, 2021
Remainder of 2021	$ 3,027
2022	11,843
2023	6,104
2024	4,618
2025	4,024
2026 and thereafter	8,437
Total	$ 38,053

4. Goodwill

Goodwill represents the cost in excess of fair value of net assets acquired in a business combination. As of September 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 Initial Winopoly Acquisition (see Note 11, *Business acquisition*). In connection with the Initial Winopoly Acquisition, the Company recorded 100% equity ownership for GAAP purposes, and no further goodwill was acquired in connection with the Full Winopoly Acquisition as described in 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 assessments for the three months ended June 30, 2021 and September 30, 2021 and determined no triggering event had occurred that would require 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:

	September 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 $993 and $0, respectively)	46,507	—
Note Payable due 2021 (less unamortized discount of $0 and $24, respectively)	—	1,226
Long-term debt, net	46,507	40,576
Less: Current portion of long-term debt	(5,000)	(7,293)
Long-term debt, net (non-current)	$ 41,507	$ 33,283

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Refinanced Term Loan

On March 31, 2021, Fluent, LLC redeemed in full $38,318 aggregate principal amount of its prior 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 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 September 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 was guaranteed by the Company's subsidiary, Fluent, LLC, did not accrue interest except in the case of default, was payable in two equal installments on the first and second anniversaries of the date of closing of the acquisition and was 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 September 30, 2021, scheduled future maturities of the Credit Agreement and Note Payable are as follows:

Year	September 30, 2021
Remainder of 2021	$ 1,250
2022	5,000
2023	5,000
2024	5,000
2025	5,000
2026	26,250
Total maturities	$ 47,500

Fair value

As of September 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 September 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.

For the nine months ended September 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 September 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 September 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 September 30, 2021 and December 31, 2020, the number of issued shares of common stock was 83,018,418 and 80,295,141, respectively, which included shares of treasury stock of 4,089,780 and 3,945,867, respectively.

For the nine months ended September 30, 2021, the change in the number of issued shares of common stock was the result of an aggregate 2,525,277 shares of common stock issued upon vesting of RSUs, including 143,913 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 September 30, 2021 and December 31, 2020, the Company held shares of treasury stock of 4,089,780 and 3,945,867, with a cost of $10,718 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 nine months ended September 30, 2021, 143,913 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 September 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 ABF, 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 September 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 21,392,864 shares of common stock. As of September 30, 2021, there were 1,015,494 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 September 30, 2021, the first condition for the stock options issued on February 1, 2019, December 20, 2019 and March 1, 2020 had been met and the second condition for the stock options issued on December 20, 2019 and March 1, 2020 had 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:

Issuance Date	February 1, 2019	December 20, 2019	March 1, 2020	March 1, 2021
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 nine months ended September 30, 2021, details of stock option activity were as follows:

	Number of options	Weighted average exercise price per share	Weighted average remaining contractual term (in years)	Aggregate intrinsic value
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 September 30, 2021	2,204,000	$ 4.41	7.4	$ —
Options exercisable as of September 30, 2021	1,307,000	$ 4.06	7.2	$ —

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 nine months ended September 30, 2021, the unvested balance of options was as follows:

	Number of options	Weighted average exercise price per share	Weighted average remaining contractual term (in years)
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 September 30, 2021	897,000	$ 4.91	7.6

Compensation expense recognized for stock options of $105 and $73 for the three months ended September 30, 2021 and 2020, respectively, and $395 and $1,424 for the nine months ended September 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 September 30, 2021, there was $230 of unrecognized share-based compensation with respect to outstanding stock options.

Restricted stock units and restricted stock

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

	Number of units	Weighted average grant-date fair value
Unvested as of December 31, 2020	3,377,097	$ 7.09
Granted	1,684,061	$ 4.67
Vested and delivered	(2,381,364)	$ 2.93
Withheld as treasury stock (1)	(143,913)	$ 4.71
Vested not delivered (2)	570,335	$ 2.70
Forfeited	(291,428)	$ 4.57
Unvested as of September 30, 2021	2,814,788	$ 8.64

(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 September 30, 2021, there were 4,089,780 outstanding shares of treasury stock.

(2) Vested not delivered represents vested RSUs with delivery deferred to a future time. For the nine months ended September 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 September 30, 2021, 1,691,666 outstanding RSUs were vested not delivered.

Compensation expense recognized for RSUs and restricted stock of $1,063 and $1,131 for the three months ended September 30, 2021 and 2020, respectively, and $3,276 and $3,544 for the nine months ended September 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 September 30, 2021, unrecognized share-based compensation expense associated with the granted RSUs and stock options amounted to $8,716, which is expected to be recognized over a weighted average period of 2.1 years.

For the three and nine months ended September 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:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Sales and marketing	$ 188	$ 172	$ 560	$ 659
Product development	167	291	668	814
General and administrative	790	707	2,349	3,375
Share-based compensation expense	1,145	1,170	3,577	4,848
Capitalized in intangible assets	23	34	94	120
Total share-based compensation	$ 1,168	$ 1,204	$ 3,671	$ 4,968

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 September 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:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Fluent segment revenue:				
United States	$ 62,533	$ 63,894	$ 180,091	$ 189,507
International	20,058	12,832	40,041	35,178
Fluent segment revenue	$ 82,591	$ 76,726	$ 220,132	$ 224,685
All Other segment revenue:				
United States	$ 3,259	$ 1,548	$ 9,194	$ 3,745
International	8	6	80	293
All Other segment revenue	$ 3,267	$ 1,554	$ 9,274	$ 4,038
Segment EBITDA				
Fluent segment EBITDA	$ 684	$ 6,862	$ 512	$ 19,560
All Other segment EBITDA	469	(405)	341	(1,792)
Total EBITDA	1,153	6,457	853	17,768
Depreciation and amortization	3,200	3,906	9,939	11,492
Total (loss) income from operations	$ (2,047)	$ 2,551	$ (9,086)	$ 6,276

	September 30, 2021	December 31, 2020
Total assets:		
Fluent	$ 288,015	$ 292,616
All Other	21,528	17,604
Total assets	$ 309,543	$ 310,220

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. Since June 21, 2021, the Company and the Tax Department have been participating in a conciliation conference, but the audits have not yet been 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 $0.8 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 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.

On October 6, 2020, the Company received notice from the Pennsylvania Office of the Attorney General ("PA OAG") that it was reviewing the Company's business practices for compliance under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*; the Telemarketer Registration Act, 73 P.S. § 2241 *et. seq.*, and the Telemarketing Sales Rule, 16 C.F.R. 310 *et seq.* The Company has been responsive and is fully cooperating with the PA OAG. 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 "Initial 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 Initial Winopoly Acquisition constituted the purchase of a business.

On April 1, 2020, 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. In connection with the Initial Winopoly Acquisition, the Company had recorded 100% equity ownership for GAAP purposes.

In connection with the Initial Winopoly Acquisition, at any time between the fourth and sixth anniversary of the Initial Winopoly Acquisition, the sellers had the ability to exercise a put option to require the Company to acquire the remaining 50% membership interests in Winopoly. During this period, the Company also had the ability to exercise a call option to require the sellers to sell the remaining 50% membership interests in Winopoly to the Company. The purchase price to be paid upon exercise of the put or call option for the remaining 50% membership interests was 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 would have been required to enter into employment agreements with the Company in order to receive their respective shares of the Put/Call Consideration.

On September 1, 2021, the Company acquired the remaining 50% membership interest in Winopoly (the “Full Winopoly Acquisition”) in a negotiated transaction. The consideration was $7,785, which consisted of $3,425 of cash at closing, $2,000 of cash due on January 31, 2022, and $500 of deferred payments due at both the first and second anniversary of the closing. The Company also issued 500,000 shares of fully-vested stock under the Fluent, Inc. 2018 Stock Incentive Plan to certain Winopoly personnel valued at $1,360. Certain seller parties entered into employment and non-competition agreements with Company in connection with the Full Winopoly Acquisition. As a result, the Put/Call Consideration was terminated, partially offsetting the consideration paid in the Full Winopoly Acquisition, resulting in a net expense of $2,796 on the date of the Full Winopoly Acquisition which was recorded as general and administrative and product development expenses. For the nine months ended September 30, 2021, the Company incurred transaction related costs of $28 in connection with the Full Winopoly Acquisition which are also recorded as general and administrative expenses.

Although the sellers maintained an equity interest in Winopoly through August 31, 2021, the Company had deemed this equity interest to be non-substantive in nature, as the sellers would primarily benefit from the Initial Winopoly Acquisition based on periodic distributions of the earnings of Winopoly and the Put/Call Consideration, both of which were 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 was considered unlikely. Therefore, no non-controlling interest had been previously recognized. Periodic distributions for services rendered were recorded as compensation expense. In addition, the Company had estimated the amount of the Put/Call Consideration, which was accreted over the six-year estimated service period, consisted of the estimated four years until the put/call could be exercised and the additional two-year service requirement. For the three and nine months ended September 30, 2021, compensation expense of $586 and $3,213, respectively, and for the three and nine months ended September 30, 2020 compensation expense of $654 and $1,184, respectively, related to the Put/Call Consideration were recorded in general and administrative on the consolidated statement of operations, which had a corresponding liability in other non-current liabilities on the consolidated balance sheet.

12. Variable Interest Entity

The Company determined that, following the Initial Winopoly Acquisition, Winopoly qualified as a VIE for which the Company was a primary beneficiary (as discussed in Note 11, *Business acquisition*). 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.

The Company's conclusion that Winopoly was a VIE, and the Company was its primary beneficiary, derived from contractual arrangements that provided the Company with control over certain activities that most significantly impacted its economic performance. These significant activities included the compliance practices of Winopoly and the Company's provisions of leads that Winopoly used to generate its revenue, which ultimately gave the Company its controlling interest. The Company therefore consolidated Winopoly in its consolidated financial statements from the inception of the Initial Winopoly Acquisition, inclusive of deemed compensation expense to the sellers for services rendered. On September 1, 2021, the Company completed the Full Winopoly Acquisition and Winopoly's status as a VIE terminated (see Note 3, *Intangible assets, net*, Note 4, *Goodwill* and Note 11, *Business acquisition).*

13. Related party transactions

During the three and nine months ended September 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 $0 and $137 as of September 30, 2021 and December 31, 2020, respectively. For the three and nine months ended September 30, 2021, the Company recognized revenue from this client of $0 and $33, respectively, and for the three and nine months ended September 30, 2020, the Company recognized revenue from this client of $69 and $214, 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. These forward-looking statements can be identified by the use of terminology such as “anticipate,” “believe," "estimate," "expect," "intend," "project," "will," or the negative thereof or other variations thereon or comparable terminology. 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.

Third Quarter Financial Summary

Three months ended September 30, 2021 compared to three months ended September 30, 2020:
- Revenue increased 10% to $85.9 million, from $78.3 million.
- Net loss was $2.5 million, or $0.03 per share, compared to net income of $1.2 million or $0.01 per share.
- Gross profit (exclusive of depreciation and amortization) of $22.1 million, a decrease of 13% over Q3 2020 and representing 25.7% of revenue.
- Media margin decreased 19% to $24.2 million, from $29.7 million, representing 28.1% of revenue.
- Adjusted EBITDA decreased 45% to $6.4 million, based on net loss of $2.5 million, from $11.6 million, based on net income of $1.2 million.
- Adjusted net income was $2.8 million, or $0.03 per share, compared to adjusted net income of $6.3 million, or $0.08 per share.

Nine months ended September 30, 2021 compared to nine months ended September 30, 2020:
- Revenue was relatively similar at $229.4 million, as compared with $228.7 million.
- Net loss was $13.9 million, or $0.17 per share, compared to net income of $2.0 million or $0.03 per share.
- Gross profit (exclusive of depreciation and amortization) decreased 17% to $58.0 million, from $70.3 million, representing 25.3% of revenue.
- Media margin decreased 12% to $69.2 million, from $78.4 million, representing 30.2% of revenue.
- Adjusted EBITDA decreased 57% to $12.9 million, based on net loss of $13.9 million, from $30.0 million, based on net income of $2.0 million.
- Adjusted net income was $1.2 million, or $0.01 per share, compared to adjusted net income of $14.3 million, or $0.18 per share.

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

Trends Affecting our Business

Traffic Quality Initiative and Increased Monetization

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. Our Traffic Quality Initiative 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 we continue to make smaller adjustments as appropriate.

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. We are also pursuing various revenue initiatives that enable us to grow revenue with existing user traffic volume. In the third quarter of 2021, we increased the monetization of consumer traffic through multiple channels, including growth in the Winopoly business (d/b/a Fluent Sales Solutions), strong client demand in the staffing and recruitment vertical, and an internally-developed email capability which enables us to re-engage consumers who have registered on our owned media properties. These new and/or improved revenue streams offset reductions in traffic volume year-over-year from our Traffic Quality Initiative. Through these initiatives, our business has become less dependent on traffic volume to generate revenue growth.

In the third quarter of 2021, we continued some of the strategies tested in the second quarter of 2021, involving increased media spend with major digital media platforms and revised bidding strategies for affiliate traffic. These strategies yielded lower margins initially, with the intent to optimize spend for improved profitability in future periods. In the third quarter of 2021, we both increased our spend and improved profitability with major digital media platforms compared to the second quarter, though profitability was still below our historical levels achieved through affiliate marketing. 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. Volatility of affiliate supply sources, 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 growing our traffic under our evolving quality standards 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.

Seasonality and Cyclicality

Our results are subject to fluctuation as a result of seasonality and cyclicality 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 opened our headquarters to employees that meet health protocols and voluntarily choose to work in the office. We continue to monitor evolving trends and guidance for COVID-19 safety protocols and our office remains open for those who voluntarily choose to work there. In addition, in light of the historically dynamic and competitive market for hiring and retaining employees, we have monitored evolving trends in flexible workplace choices for employees. In light of the forgoing factors, we anticipate maintaining a flexible approach to workplace choices in the near term. 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 that portion of gross profit (exclusive of depreciation and amortization) reflecting variable costs paid for media and related expenses and excluding non-media cost of revenue. Gross profit (exclusive of depreciation and amortization) represents revenue minus cost of revenue (exclusive of depreciation and amortization). 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 gross profit (exclusive of depreciation and amortization), which we believe is the most directly comparable GAAP measure.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenue	$ 85,858	$ 78,280	$ 229,406	$ 228,723
Less: Cost of revenue (exclusive of depreciation and amortization)	63,784	52,771	171,379	158,402
Gross Profit (exclusive of depreciation and amortization)	$ 22,074	$ 25,509	$ 58,027	$ 70,321
Gross Profit (exclusive of depreciation and amortization) % of revenue	26%	33%	25%	31%
Non-media cost of revenue (1)	2,088	4,173	11,141	8,088
Media margin	$ 24,162	$ 29,682	$ 69,168	$ 78,409
Media margin % of revenue	28.1%	37.9%	30.2%	34.3%

(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 September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net (loss) income	$ (2,452)	$ 1,169	$ (13,889)	$ 2,029
Income tax (benefit) expense	—	65	(1)	65
Interest expense, net	405	1,317	1,840	4,182
Depreciation and amortization	3,200	3,906	9,939	11,492
Share-based compensation expense	1,145	1,170	3,577	4,848
Loss on early extinguishment of debt	—	—	2,964	—
Accrued compensation expense for Put/Call Consideration	586	654	3,213	1,184
Goodwill impairment	—	—	—	817
Write-off of intangible assets	144	—	343	—
Acquisition-related costs(1)	2,906	89	3,406	151
Restructuring and other severance costs	133	565	230	565
Certain litigation and other related costs	295	2,671	1,322	4,693
Adjusted EBITDA	$ 6,362	$ 11,606	$ 12,944	$ 30,026

(1) Included in the three and nine months ended September 30, 2021 is a net expense of $2,796 related to the Full Winopoly Acquisition.

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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.

	Three Months Ended September 30,		Nine Months Ended September 30,	
(In thousands, except share data)	**2021**	**2020**	**2021**	**2020**
Net (loss) income	$ (2,452)	$ 1,169	$ (13,889)	$ 2,029
Share-based compensation expense	1,145	1,170	3,577	4,848
Loss on early extinguishment of debt	—	—	2,964	—
Accrued compensation expense for Put/Call Consideration	586	654	3,213	1,184
Goodwill impairment	—	—	—	817
Write-off of intangible assets	144	—	343	—
Acquisition-related costs(1)	2,906	89	3,406	151
Restructuring and other severance costs	133	565	230	565
Certain litigation and other related costs	295	2,671	1,322	4,693
Adjusted net income	$ 2,757	$ 6,318	$ 1,166	$ 14,287
Adjusted net income per share:				
Basic	$ 0.03	$ 0.08	$ 0.01	$ 0.18
Diluted	$ 0.03	$ 0.08	$ 0.01	$ 0.18
Weighted average number of shares outstanding:				
Basic	80,133,406	78,577,974	79,753,662	78,564,262
Diluted	80,514,650	79,172,578	89,775,776	79,214,619

(1) Included in the three and nine months ended September 30, 2021 is a net expense of $2,796 related to the Full Winopoly Acquisition.

We present media margin, media margin as a percentage of revenue, 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 non-GAAP financial measures with certain limitations regarding their usefulness. They do not reflect our financial results in accordance with GAAP, as they do not include the impact of certain expenses that are reflected in our condensed consolidated statements of operations. Accordingly, these metrics are not indicative of our overall results or indicators of past or future financial performance. Further, they are not financial measures of profitability and are neither intended to be used as a proxy for the profitability of our business nor to imply profitability. 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 September 30, 2021 compared to three months ended September 30, 2020

Revenue. Revenue increased $7.6 million, or 10%, to $85.9 million for the three months ended September 30, 2021, from $78.3 million for the three months ended September 30, 2020. The increase was largely attributable to growth in the Winopoly business (d/b/a Fluent Sales Solutions), which considerably expanded its operating scale year-over-year through increased use of contracted call center personnel. This expanded capacity enabled higher volumes of outbound consumer contacts, including consumers who have registered on Fluent's owned media properties, as well as consumer leads sourced from third parties. The increase in revenue also reflects strong client demand in the staffing and recruitment vertical, resulting in improvements in both pricing and volume in the 2021 quarter compared to the 2020 quarter. The increase in revenue also reflected an internally-developed email capability which enables us to re-engage consumers who have already registered on our owned media properties. This revenue stream, which comes at high margins, was nascent in the second quarter of 2021 and not existent in the third quarter of 2020.

Each of the foregoing factors has served to increase monetization of consumer traffic, which has more than offset reductions in traffic volume year-over-year, stemming from our Traffic Quality Initiative. Through these initiatives, our business has become less dependent on traffic volume to generate revenue growth. In tandem with the forgoing, we continued to source higher volumes of traffic from major digital media platforms in the third quarter, with year-over-year reductions in lower-quality affiliate traffic. These trends are anticipated to continue into the fourth quarter of 2021 as we continue to test and scale media channels, strategies and partnerships. 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 and subsequently recovered and expanded to varying degrees since that time. Demand from certain advertisers in other verticals, such as streaming services and mobile gaming, increased during the pandemic and has remained strong. 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 $11.0 million, or 21%, to $63.8 million for the three months ended September 30, 2021, from $52.8 million for the three months ended September 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 74% for the three months ended September 30, 2021, compared to 67% 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. In the third quarter of 2021, we continued some of the strategies tested in the second quarter of 2021, involving increased media spend with major digital media platforms and revised bidding strategies for affiliate traffic. These strategies yielded lower margins initially, with the intent to optimize spend for improved profitability in future periods. In the third quarter 2021, we both increased our spend and improved profitability with our major digital media platforms compared to the second quarter, though profitability was still below our historical levels achieved through affiliate marketing. 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. 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 September 30, 2021, from $2.9 million for the three months ended September 30, 2020. For the three months ended September 30, 2021 and 2020, the amounts consisted mainly of employee salaries and benefits of $2.7 million and $2.5 million, non-cash share-based compensation expense of $0.2 and $0.2 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 $1.1, or 33%, to $4.5 million for the three months ended September 30, 2021, from $3.4 million for the three months ended September 30, 2020. For the three months ended September 30, 2021 and 2020, the amounts consisted mainly of salaries and benefits of $2.8 million and $2.5 million, acquisition-related costs of $0.6 million and $0.0 million, professional fees of $0.5 million and $0.2 million, software license and maintenance costs of $0.2 million and $0.3 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 along with acquisition-related costs in connection with the Full Winopoly Acquisition described below under the heading "Liquidity and Capital Resources."

General and administrative. General and administrative expenses increased $0.5 million, or 4%, to $13.3 million for the three months ended September 30, 2021, from $12.8 million for the three months ended September 30, 2020. For the three months ended September 30, 2021 and 2020, the amounts consisted mainly of employee salaries and benefits of $5.1 million and $4.3 million, acquisition-related costs of $2.3 million and $0.1 million, professional fees of $1.4 million and $1.4 million, software license and maintenance costs of $1.2 million and $0.5 million, office overhead of $1.1 million and $1.0 million, non-cash share-based compensation expense of $0.8 million and $0.7 million, accrued compensation expense for Put/Call Consideration from the Initial Winopoly Acquisition described below under the heading "Liquidity and Capital Resources" of $0.6 million and $0.7 million (see Note 11, *Business acquisition*, in the Notes to Consolidated Financial Statements), and certain litigation and related costs of $0.3 million and $2.7 million, respectively. The increase was mainly the result of increased acquisition-related costs in connection with the Full Winopoly Acquisition, employee salaries and benefits and software costs, largely offset by reduced litigation and related costs.

Depreciation and amortization. Depreciation and amortization expenses decreased $0.7 million, or 18%, to $3.2 million for the three months ended September 30, 2021, from $3.9 million for the three months ended September 30, 2020.

Write-off of intangible assets. During the three months ended September 30, 2021, we recognized $0.1 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 69%, to $0.4 million for the three months ended September 30, 2021, from $1.3 million for the three months ended September 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 September 30, 2021, net loss before income taxes was $2.5 million, compared to net income before income taxes of $1.2 million for the three months ended September 30, 2020. The decrease of $3.7 million was primarily due to an increase in cost of revenue of $11.0 million, an increase in general and administrative expense of $0.5 million, an increase in product development of $1.1 million, and an increase in sales and marketing of $0.1 million, partially offset by an increase in revenue of $7.6 million, a decrease in interest expense of $0.9 million and a decrease in depreciation and amortization expense of $0.7 million, as discussed above.

Income taxes. Income tax expense was $0.0 million and $0.1 million, respectively, for the three months ended September 30, 2021 and 2020, respectively.

As of September 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 $2.5 million and net income of $1.2 million were recognized for the three months ended September 30, 2021 and 2020, respectively, as a result of the foregoing.

Nine months ended September 30, 2021 compared to nine months ended September 30, 2020

Revenue. Revenue increased $0.7 million, or less than 0.5%, to $229.4 million for the nine months ended September 30, 2021, from $228.7 million for the nine months ended September 30, 2020. The revenue was relatively similar due the growth in the Winopoly business (d/b/a Fluent Sales Solutions), strengthened client demand in the staffing and recruitment vertical, and the development of email re-engagement capabilities described above, largely offset by the reduced volumes of affiliate traffic, stemming from our Traffic Quality Initiative.

Cost of revenue (exclusive of depreciation and amortization). Cost of revenue increased $13.0 million, or 8%, to $171.4 million for the nine months ended September 30, 2021, from $158.4 million for the nine months ended September 30, 2020.

The total cost of revenue as a percentage of revenue increased to 75% for the nine months ended September 30, 2021, compared to 69% 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 $0.4 million, or 4%, to $9.0 million for the nine months ended September 30, 2021, from $8.6 million for the nine months ended September 30, 2020. For the nine months ended September 30, 2021 and 2020, the amounts consisted mainly of employee salaries and benefits of $7.8 million and $7.0 million, non-cash share-based compensation expense of $0.6 and $0.7 million, and advertising costs of $0.4 and $0.6 million, respectively.

Product development. Product development increased $2.1, or 23%, to $11.3 million for the nine months ended September 30, 2021, from $9.2 million for the nine months ended September 30, 2020. For the nine months ended September 30, 2021 and 2020, the amounts consisted mainly of salaries and benefits of $7.8 million and $6.9 million, professional fees of $1.0 million and $0.4 million, software license and maintenance costs of $0.9 million and $0.7 million, non-cash share-based compensation expense of $0.7 million and $0.8 million, and acquisition-related costs of $0.6 million and $0.0 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] along with the acquisition-related costs in connection with the Full Winopoly Acquisition.

General and administrative. General and administrative expenses increased $2.6 million, or 8%, to $36.5 million for the nine months ended September 30, 2021, from $33.9 million for the nine months ended September 30, 2020. For the nine months ended September 30, 2021 and 2020, the amounts consisted mainly of employee salaries and benefits of $15.0 million and $13.0 million, professional fees of $4.1 million and $3.9 million, office overhead of $3.3 million and $3.0 million, accrued compensation expense for Put/Call Consideration from the Initial Winopoly Acquisition of $3.2 million and $1.2 million (see Note 11, *Business acquisition,* in the Notes to Consolidated Financial Statements), acquisition-related costs of $2.8 million and $0.2 million, IT and website related costs of $2.7 million and $1.2 million, non-cash share-based compensation expense of $2.3 million and $3.4 million, and certain litigation and related costs of $1.3 million and $4.7 million, respectively. The increase was mainly the result of acquisition-related costs in connection with the Full Winopoly Acquisition, accrued compensation expense for the Initial Winopoly Put/Call Consideration, increased employee salaries and benefits, and IT and IT website costs, partially offset by a reduced litigation and other costs and a decline in non-cash share-based compensation expense.

Depreciation and amortization. Depreciation and amortization expenses decreased $1.6 million, or 14%, to $9.9 million for the nine months ended September 30, 2021, from $11.5 million for the nine months ended September 30, 2020.

Goodwill impairment. During the nine months ended September 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 nine months ended September 30, 2021, we recognized $0.3 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 $2.3 million, or 56%, to $1.8 million for the nine months ended September 30, 2021, from $4.2 million for the nine months ended September 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 nine months ended September 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 nine months ended September 30, 2021, loss before income taxes was $13.9 million, compared to net income before income taxes of $2.1 million for the nine months ended September 30, 2020. The decrease of $16.0 million was primarily due to an increase in cost of revenue of $13.0 million, the loss on early extinguishment of debt recorded in the first quarter of 2021 of $3.0 million, an increase in general and administrative expense of $2.6 million, an increase in product development of $2.1 million, and an increase in sales and marketing of $0.4 million, partially offset by a decrease in interest expense of $2.3 million, a decrease in depreciation and amortization expense of $1.6 million, and an increase in revenue of $0.7 million, as discussed above.

Income taxes. There was a $0.0 million income tax benefit and $0.1 million income tax expense for the nine months ended September 30, 2021 and 2020, respectively.

Net (loss) income. Net loss of $13.9 million and net income of $2.0 million were recognized for the nine months ended September 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 nine months ended September 30, 2021, net cash used in operating activities was $6.9 million, as compared with $12.9 million of net cash provided by operating activities in the nine months ended September 30, 2020. Net loss in the current period of $13.9 million represents a decrease of $15.9 million, as compared with net income of $2.0 million in the prior period. Adjustments to reconcile net income to net cash used in operating activities of $19.1 million in the current period increased by $0.6 million, as compared with $19.7 million in the prior period, primarily due to the inclusion of a non-cash loss on early extinguishment of debt and an accrual for Put/Call Consideration in the current period through September 1, 2021, partially offset by reductions in share-based compensation expense and depreciation and amortization. Changes in assets and liabilities consumed cash of $12.2 million in the current period, as compared with consuming cash of $8.8 million in the prior period, primarily due to ordinary-course changes in working capital, largely involving the timing of receipt of amounts owing from clients and disbursements of amounts payable to vendors.

Cash flows used in investing activities. For the nine months ended September 30, 2021 and 2020, net cash used in investing activities was $2.3 million and $3.4 million, respectively. The decrease was mainly due to the Initial Winopoly Acquisition that occurred in the prior year, with the consideration for the Full Winopoly Acquisition reflected in product development and general and administrative expenses as disclosed above.

Cash flows provided by (used in) financing activities. Net cash provided by financing activities for the nine months ended September 30, 2021 was $3.7 million and net cash used in financing activities was $12.7 million for the prior period. The increase of $16.4 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 $34.6 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 $0.2 million.

As of September 30, 2021, we had noncancelable operating lease commitments of $9.1 million and long-term debt with $47.5 million principal balance. For the nine months ended September 30, 2021, we funded our operations using available cash.

As of September 30, 2021, we had cash, cash equivalents and restricted cash of approximately $17.1 million, a decrease of $5.5 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 (the "Initial Winopoly Acquisition"), 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. On September 1, 2021, we acquired the remaining 50% membership interest in Winopoly, LLC ("the Full Winopoly Acquisition") in a negotiated transaction. The consideration was $7.8 million, which consisted of $3.4 million of cash at closing, $2.0 million of cash due on January 31, 2022, and $0.5 million of deferred payments due at each of the first and second anniversaries of the closing. We also issued 500,000 shares of fully-vested stock under the Fluent, Inc. 2018 Stock Incentive Plan to certain Winopoly personnel valued at $1.4 million. 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 September 30, 2021, the Credit Agreement has an outstanding principal balance of $47.5 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's consolidated leverage ratio. The anticipated opening interest rate of the New Credit Facility is 2.50% (LIBOR + 2.25%).

The Credit Agreement contains 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 September 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 September 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 September 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 September 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 September 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 aware of 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 of the Company. 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. Since June 21, 2021, the Company and the Tax Department have been participating in a conciliation conference, but the audits have not yet been 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 $0.8 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 from the FTC regarding compliance with the Federal Trade Commission Act or the Telemarketing Sales Rule, 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.

On October 6, 2020, the Company received notice from the Pennsylvania Office of the Attorney General (“PA OAG”) that it was reviewing the Company’s business practices for compliance under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*; the Telemarketer Registration Act, 73 P.S. § 2241 *et. seq.*, and the Telemarketing Sales Rule, 16 C.F.R. 310 *et seq.* The Company has been responsive and is fully cooperating with the PA OAG. 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.

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 third 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
July 1-31, 2021	10,623	2.74	—	—
August 1-31, 2021	8,478	2.13	—	—
September 1-30, 2021	1,847	2.72	—	—
Total	20,948	2.49	—	—

(1) During July 2021, August 2021 and September 2021, 10,623 shares, 8,478 shares and 1,847 shares, respectively (totaling 20,948 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.

		Incorporated by Reference				Filed
Exhibit No.	**Exhibit Description**	**Form**	**File No.**	**Exhibit**	**Filing Date**	**Herewith**
3.1	Certificate of Incorporation	8-K	001-37893	3.2	3/26/2015	
3.2	Certificate of Amendment to the Certificate of Incorporation.	8-K	001-37893	3.1	4/16/2018	
3.3	Amended and Restated Bylaws.	8-K	001-37893	3.2	2/19/2019	
4.1	Form of Common Stock Certificate.	8-K	001-37893	4.1	4/16/2018	
10.1	Amendment No. 1 to its Credit Agreement, effective as of September 1, 2021, by and among Fluent, Inc., Fluent, LLC, as Borrower, certain subsidiaries of the Company party thereto, the lenders party thereto, and Citizens Bank, N.A., as Administrative Agent.					X
31.1	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.					X
31.2	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.					X
32.1*	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.					X
32.2*	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.					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.

Fluent, Inc.

November 4, 2021	By:	/s/ Alexander Mandel
		Alexander Mandel Chief Financial Officer (Principal Financial and Accounting Officer)

Exhibit 10.1

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of September 1, 2021 is by and among **FLUENT, LLC.**, a Delaware limited liability company (the "Borrower"), the Required Lenders (as defined below) party hereto, and **CITIZENS BANK, N.A.**, a national banking association, as administrative agent for the Lenders under the Credit Agreement (as hereinafter defined) (in such capacity, the "Administrative Agent"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

W I T N E S S E T H

WHEREAS, the Borrower, the Guarantors, certain banks and financial institutions from time to time party to the Credit Agreement (the "Lenders") and the Administrative Agent are parties to that certain Credit Agreement, dated as of March 31, 2021 (as amended, modified, extended, restated, replaced or supplemented from time to time, the "Credit Agreement");

WHEREAS, the Credit Parties have requested that the Administrative Agent and the Required Lenders agree to amend certain provisions of the Credit Agreement; and

WHEREAS, the Administrative Agent and the Required Lenders are willing to make such amendments to the Credit Agreement, in each case in accordance with and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
AMENDMENTS TO CREDIT AGREEMENT

1.1 Amendments to Credit Agreement. Subject to the terms and conditions of this Amendment (including the satisfaction or waiver of the conditions precedent set forth in Section 4), the Credit Agreement is amended as follows:

(a) Section 1.1 of the Credit Agreement is hereby amended by adding the following new definitions in correct alphabetical order:

"First Amendment" shall mean that certain First Amendment to Credit Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, the Lenders party thereto and the Administrative Agent.

"First Amendment Effective Date" shall mean September 1, 2021.

"Erroneous Payment" shall have the meaning assigned to such term in Section 8.14(a).

"Erroneous Payment Deficiency Assignment" shall have the meaning assigned to such term in Section 8.14(d).

"Erroneous Payment Impacted Class" shall have the meaning assigned to such term in Section 8.14(d).

"Erroneous Payment Return Deficiency" shall have the meaning assigned to such term in Section 8.14(d).

"Erroneous Payment Subrogation Rights" shall have the meaning assigned to such term in Section 8.14(d).

"Payment Recipient" shall have the meaning assigned to such term in Section 8.14(a)."

(b) The following definitions in Section 1.1 of the Credit Agreement are hereby amended and restated in their entirety as follows:

“Funded Debt” shall mean, with respect to any Person, without duplication, all Indebtedness of such Person (other than Indebtedness set forth in clauses (c), (f) (other than Guaranty Obligations of Funded Debt), (h), (i) (except to the extent such letters of credit or bankers’ acceptances are drawn and remain unreimbursed) and (l) (except to the extent such Indebtedness would otherwise constitute Funded Debt) of such definition).

“Permitted Acquisition” shall mean (x) the acquisition of the remaining membership interests in Winopoly, LLC, a New York limited liability company, effective on the First Amendment Closing Date, or (y) an acquisition or any series of related acquisitions by a Credit Party or Subsidiary thereof of (a) all or substantially all of the assets or at least a majority of the outstanding Equity Interests of a Person, (b) a Person by a merger, amalgamation or consolidation or any other combination with such Person or (c) any division, line of business or other business unit of a Person (such Person or such division, line of business or other business unit of such Person shall be referred to herein as the “Target”), in each case that is a type of business (or has assets used or useful in a type of business) permitted to be engaged in by the Credit Parties and their Subsidiaries pursuant to Section 6.3, in each case under this clause (y) so long as:

(i) no Default or Event of Default shall then exist or would exist after giving effect thereto;

(ii) after giving effect to the acquisition on a Pro Forma Basis, (A) the Credit Parties are in compliance with each of the financial covenants set forth in Section 5.9 and (B) the Total Leverage Ratio shall be no greater than the lower of (1) 2.75 to 1.00 and (2) the then applicable level set forth in Section 5.9; provided, that, in the case of any Limited Condition Acquisition, the financial covenants shall be tested on the date on which the Limited Condition Acquisition Agreement in connection therewith is executed and delivered by the parties thereto;

(iii) the Administrative Agent, on behalf of the Secured Parties, shall have received (or shall receive in connection with the closing of such acquisition) a first priority perfected security interest (subject to Permitted Liens) in all property (including, without limitation, Equity Interests) acquired with respect to the Target in accordance with, and to the extent required by, the terms of Section 5.12, and the Target, if a Person, shall have executed a Joinder Agreement in accordance with, and to the extent required by, the terms of Section 5.10;

(iv) such acquisition shall not be a “hostile” acquisition and shall have been approved by the Board of Directors (or equivalent) and/or shareholders (or equivalent) of the applicable Credit Party and the Target;

(v) not later than five (5) Business Days (or such shorter period as may be reasonably practicable, if approved by the Administrative Agent) prior to the consummation of any such acquisition that is not funded solely with equity contributions, and with respect to any such acquisition the cash acquisition consideration of which is greater than or equal to $10,000,000, the Borrower shall have delivered to the Administrative Agent (i) a description of the proposed acquisition, (ii) to the extent obtained and available, a quality of earnings report and (iii) to the extent reasonably requested by the Administrative Agent, (A) satisfactory environmental assessments and (B) financial statements for the Borrower including the acquisition target on a Pro Forma Basis;

(vi) the Borrower shall have delivered to the Administrative Agent within five (5) Business Days after the acquisition, fully executed copies of the primary acquisition agreements for such acquisition together with all schedules thereto;

(vii) after giving effect to such acquisition, there shall be at least $17,500,000 of Liquidity; and

(viii) the aggregate consideration (including, without limitation, Earn-Out Obligations, Seller Notes, deferred compensation, non-competition arrangements and the amount of Indebtedness and other liabilities incurred or assumed by the Credit Parties and their Subsidiaries, but excluding amounts paid with (x) proceeds of a substantially simultaneous equity issuance or contribution or (y) equity interests in the Parent) paid by the Credit Parties and their Subsidiaries with respect to Persons that do not become Guarantors as required pursuant to Section 5.10 (A) in connection with any single acquisition shall not exceed $15,000,000 and (B) for all such acquisitions made during the term of this Agreement shall not exceed $25,000,000.

"Excluded Subsidiary" shall mean (i) any Subsidiary to the extent the provision of a Guaranty by such Subsidiary is prohibited by applicable law or regulation, (ii) any Immaterial Subsidiary, (iii) any Subsidiary for which the provision of a Guaranty by such Subsidiary could reasonably be expected to result in material adverse tax consequences as reasonably determined by the Borrower in good faith in consultation with the Administrative Agent, (iv) any CFC, (v) any CFC Holding Company, (vi) any Person that becomes a Subsidiary after the Closing Date and that is prohibited by any contractual obligation, or the guarantee of the Obligations by which would require any approval or consent of any Person (other than the Parent or any of its Subsidiaries), in each case which prohibition or requirement is in existence at the time such Person becomes a Subsidiary (so long as such prohibition or requirement is not created in contemplation of or in connection with such Person becoming a Subsidiary) and (vii) to the extent the Administrative Agent and the Borrower mutually determine the cost and/or burden of obtaining a Guaranty from such Subsidiary outweigh the benefit to the Lenders. Notwithstanding the foregoing, the Borrower in its sole discretion may cause any Excluded Subsidiary to become a Guarantor in accordance with Section 5.10, provided that no violation of any law, regulation or order of any Government Authority would result at the time of any such joinder.

(c) The definition of "Winopoly JV" in Section 1.1 of the Credit Agreement is hereby deleted in its entirety.

(d) Clause (d) of Section 6.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"(d) Unsecured intercompany Indebtedness among the Credit Parties and, to the extent permitted pursuant to Section 6.5(h), their Subsidiaries; provided that any such Indebtedness shall be, to the extent required by the Administrative Agent, evidenced by the Global Intercompany Note which shall be pledged to the Administrative Agent as Collateral for the Credit Party Obligations or shall otherwise be subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory note or a subordination agreement in form and substance reasonably satisfactory to Administrative Agent;"

(e) Clause (h) of Section 6.1 of the Credit Agreement is hereby amended by deleting the text "or 6.5(l)".

(f) Clause (q) of Section 6.1 of the Credit Agreement is hereby deleted in its entirety, and clause (r) of Section 6.1 will now be ordered as clause (q).

(g) Clause (h) of Section 6.5 of the Credit Agreement is hereby amended by deleting the text "(in addition to Investments expressly permitted under Section 6.5(l))".

(h) Clause (l) of Section 6.5 of the Credit Agreement is hereby deleted in its entirety, and clauses (m) through (r) of Section 6.5 will now be ordered as clauses (l) through (q).

(i) Article VIII of the Credit Agreement is hereby amended by adding a new Section 8.14 to the end thereof as follows:

"Section 8.14 **Erroneous Payments**.

(a) If Administrative Agent notifies a Lender, Issuing Bank or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (any such Lender, Issuing Bank, Secured Party or other recipient, a "Payment Recipient") that Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under Section 8.14(b)) that any funds received by such Payment Recipient from Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of Administrative Agent, and such Lender, Issuing Bank or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of Administrative Agent to any Payment Recipient under this Section 8.14(a) shall be conclusive, absent manifest error.

(b) Without limiting the provisions of Section 8.14(a), each Payment Recipient hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates), or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case:

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from Administrative Agent to the contrary) or (B) in the case of immediately preceding clause (z), an error has been made, in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Administrative Agent pursuant to this Section 8.14(b).

(c) Each Lender, Issuing Bank or Secured Party hereby authorizes Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or Secured Party under any Loan Document, or otherwise payable or distributable by Administrative Agent to such Lender, Issuing Bank or Secured Party from any source, against any amount due to Administrative Agent under Section 8.14(a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by Administrative Agent for any reason, after demand therefor by Administrative Agent in accordance with Section 8.14(a), from any Lender or Issuing Bank that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon Administrative Agent's notice to such Lender or Issuing Bank at any time, (i) such Lender or Issuing Bank shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as Administrative Agent may specify) (such assignment of the Loans (but not Commitments), the "Erroneous Payment Deficiency Assignment") at par plus any accrued and unpaid interest (with the assignment fee to be waived by Administrative Agent in such instance), and is hereby (together with Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender or Issuing Bank shall deliver any Notes evidencing such Loans to Borrower or Administrative Agent, (ii) Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, Administrative Agent as the assignee Lender shall become a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuing Bank shall cease to be a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender or assigning Issuing Bank and (iv) Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender or Issuing Bank shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and Administrative Agent shall retain all other rights, remedies and claims against such Lender or Issuing Bank (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or Issuing Bank and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether Administrative Agent may be equitably subrogated, Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuing Bank or Secured Party under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Administrative Agent from the Borrower or any other Credit Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 8.14 shall survive the resignation or replacement of Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof).

(h) Notwithstanding anything to the contrary herein or in any other Loan Document, no Credit Party nor any of their respective Affiliates shall have any obligations or liabilities directly or indirectly arising out of this Section 8.14 in respect of any Erroneous Payment (other than having consented to the assignment referenced in Section 8.14(d) above)."

(j) Schedule 3.12 of the Credit Agreement is hereby amended and replaced in its entirety with Exhibit A attached hereto.

(k) Schedule 3.16(e) of the Credit Agreement is hereby amended and replaced in its entirety with Exhibit B attached hereto.

(l) Schedule 6.1(b) of the Credit Agreement is hereby amended and replaced in its entirety with Exhibit C attached hereto.

ARTICLE II
CONDITIONS TO EFFECTIVENESS

2.1 Closing Conditions. This Amendment shall become effective as of the first day and year set forth above (the "First Amendment Effective Date") upon satisfaction of the following conditions (in each case, in form and substance reasonably acceptable to the Administrative Agent):

(a) Closing of Transaction. The Borrower shall have completed the acquisition of the remaining 50% of the membership interests of Winopoly, LLC (the "Acquisition").

(b) Executed Amendment. The Administrative Agent shall have received a copy of this Amendment duly executed by each of the Borrower, the Required Lenders and the Administrative Agent.

(c) Fees and Expenses. (i) The Administrative Agent shall have received from the Borrower such fees and expenses that are payable in connection with the consummation of the transactions contemplated hereby and (ii) King & Spalding LLP shall have received from the Borrower payment of all outstanding fees and expenses previously incurred and all fees and expenses incurred in connection with this Amendment.

ARTICLE III
MISCELLANEOUS

3.1 Amended Terms. On and after the First Amendment Effective Date, all references to the Credit Agreement in each of the Credit Documents shall hereafter mean the Credit Agreement as amended by this Amendment. Except as specifically amended hereby or otherwise agreed, the Credit Agreement is hereby ratified and confirmed and shall remain in full force and effect according to its terms.

3.2 Representations and Warranties of Credit Parties. Borrower represents and warrants as follows:

(a) Borrower has full power and authority and the legal right to make, deliver and perform this Amendment and has taken all necessary limited liability company, partnership or corporate action, as applicable, to authorize the execution, delivery and performance by it of this Amendment. This Amendment has been duly executed and delivered on behalf of Borrower. This Amendment constitutes a legal, valid and binding obligation of each Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(b) The execution, delivery and performance by the Borrower of this Amendment (i) will not violate any material Requirement of Law or any Contractual Obligation of any Credit Party, except those as to which waivers or consents have been obtained or, in the case of Contractual Obligations, where such violation could not reasonably be expected to have a Material Adverse Effect, (ii) will not conflict with, result in a breach of or constitute a default under (A) the articles of incorporation, bylaws, articles of organization, operating agreement or other organization documents of the Credit Parties, (B) any material Contractual Obligation to which such Person is a party or by which any of its properties may be bound or (C) any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject, except in the case of clause (ii)(B) and (ii)(C) where such conflict could not reasonably be expected to have a Material Adverse Effect and (iii) will not result in, or require, the creation or imposition of any Lien on any Credit Party's properties or revenues pursuant to any Requirement of Law or Contractual Obligation other than the Liens arising under or contemplated in connection with the Credit Documents or Permitted Liens.

(c) The representations and warranties made by the Borrower herein and in the other Credit Documents (including the Credit Agreement) are (i) with respect to representations and warranties that contain a materiality qualification, true and correct and (ii) with respect to representations and warranties that do not contain a materiality qualification, true and correct in all material respects, in each case on and as of the date hereof as if made on and as of such date except for any representation or warranty made as of an earlier date, which representation and warranty is (x) with respect to representations and warranties that contain a materiality qualification, true and correct and (y) with respect to representations and warranties that do not contain a materiality qualification, true and correct in all material respects, in each case as of such earlier date.

(d) No Default or Event of Default has occurred and is continuing on the date hereof.

(e) The Security Documents continue to create a valid security interest in, and Lien upon, the Collateral, in favor of the Administrative Agent, for the benefit of the Lenders, which security interests and Liens are perfected in accordance with the terms of the Security Documents and prior to all Liens other than Permitted Liens.

(f) Other than as set forth herein, the Credit Party Obligations are not reduced or modified by this Amendment and are not subject to any offsets, defenses or counterclaims.

(g) As of the First Amendment Effective Date, the information included in any Beneficial Ownership Certification provided to the Administrative Agent or any Lender is true and correct in all respects.

3.3 Reaffirmation of Credit Party Obligations. The Borrower hereby ratifies the Credit Agreement and the other Credit Documents and acknowledges and reaffirms (a) that it is bound by all terms of the Credit Agreement and the other Credit Documents applicable to it and (b) that it is responsible for the observance and full performance of its respective Credit Party Obligations.

3.4 Credit Document. This Amendment shall constitute a Credit Document under the terms of the Credit Agreement.

3.5 Expenses. The Borrower agrees to pay all reasonable costs and fees and expenses of the Administrative Agent in connection with the preparation, execution and delivery of this Amendment, including without limitation the reasonable fees and expenses of the Administrative Agent's legal counsel.

3.6 Further Assurances. The Borrower agrees to promptly take such action, upon the request of the Administrative Agent, as is necessary to carry out the intent of this Amendment.

3.7 Entirety. This Amendment and the other Credit Documents embody the entire agreement among the parties hereto and supersede all prior agreements and understandings, oral or written, if any, relating to the subject matter hereof.

3.8 Counterparts; Telecopy. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart to this Amendment by telecopy or other electronic means shall be effective as an original and shall constitute a representation that an original will be delivered.

3.9 Joinder. The Borrower hereby agrees to join Winopoly, LLC as a Guarantor pursuant to Section 5.10 of the Credit Agreement within sixty (60) days of the consummation of the Acquisition.

3.10 No Actions, Claims, Etc. As of the date hereof, each of the Credit Parties hereby acknowledges and confirms that it has no knowledge of any actions, causes of action, claims, demands, damages and liabilities of whatever kind or nature, in law or in equity, against the Administrative Agent, the Lenders, or the Administrative Agent's or the Lenders' respective officers, employees, representatives, agents, counsel or directors arising from any action by such Persons, or failure of such Persons to act under the Credit Agreement on or prior to the date hereof.

3.11 GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

3.12 Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.13 Consent to Jurisdiction; Service of Process and Venue; Waiver of Jury Trial. The jurisdiction, service of process, venue and waiver of jury trial provisions set forth in Sections 9.13 and 9.16 of the Credit Agreement are hereby incorporated by reference, *mutatis mutandis*.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have caused this Amendment to be duly executed on the date first above written.

BORROWER:

FLUENT, LLC

By: /s/ Alex Mandel
Name: Alex Mandel
Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

CITIZENS BANK, N.A., as a Lender, Issuing Lender, Swingline Lender and as Administrative Agent on behalf of the Lenders

By: /s/ Anthony M. Selvaggio
Name: Anthony M. Selvaggio
Title: Senior Vice President

LENDER:	**SILICON VALLEY BANK,** as a Lender
	By: /s/ Ryan Aberdale Name: Ryan Aberdale Title: Vice President

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LENDER:

BankUnited, N. A., as a Lender

By: /s/ John S. Wamboldt
Name: John S. Wamboldt
Title: SVP

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

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.

November 4, 2021

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

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

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.

November 4, 2021

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

Exhibit 32.1

**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 September 30, 2021 (the “Report”), the undersigned hereby certifies in his capacity as Interim Chief Executive Officer, 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.

November 4, 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.

Exhibit 32.2

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 September 30, 2021 (the “Report”), the undersigned hereby certifies in his capacity as Chief Financial Officer, 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.

November 4, 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.