

TALK AMERICA HOLDINGS INC

Form DEFM14A

November 15, 2006

[Table of Contents](#)

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

**SCHEDULE 14A**  
**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF**  
**THE SECURITIES EXCHANGE ACT OF 1934**

Filed by the Registrant  Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e) (2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12

**TALK AMERICA HOLDINGS, INC.**

---

(Name of Registrant as Specified In Its Charter)

N/A

---

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

---

(2) Aggregate number of securities to which transaction applies:

---

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

---

(4) Proposed maximum aggregate value of transaction:

---

(5) Total fee paid:

---

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

---

(2) Form, Schedule or Registration Statement No.:

---

(3) Filing Party:

---

(4) Date Filed:

---

**Table of Contents**

**TALK AMERICA HOLDINGS, INC.**

**6805 ROUTE**

**202 NEW HOPE, PA 18938**

**(215) 862-1500**

Dear Stockholder:

The board of directors (the Board) of Talk America Holdings, Inc. (Talk America or the Company) has approved a merger agreement providing for the acquisition of the Company by Cavalier Acquisition Corp., an indirectly wholly owned subsidiary of Cavalier Telephone Corporation. If the merger is completed, you will receive \$8.10 in cash, without interest, for each share of the Company's common stock you own.

You will be asked, at a special meeting of the Company's stockholders (the Special Meeting), to adopt the merger agreement. **The Board has approved and declared the merger and the merger agreement advisable, and has declared that it is fair to and in the best interests of Talk America's stockholders that the Company enter into the merger agreement and consummate the merger on the terms and conditions set forth in the merger agreement. The board of directors recommends that Talk America's stockholders vote FOR the adoption of the merger agreement.**

The time, date and place of the Special Meeting to consider and vote upon a proposal to adopt the merger agreement are as follows:

10:00 a.m. Eastern Time, December 15, 2006 The Lambertville House, 32 Bridge Street, Lambertville, NJ 08530

The proxy statement attached to this letter provides you with information about the proposed merger and the Special Meeting of the Company's stockholders. We encourage you to read the entire proxy statement carefully. You may also obtain more information about the Company from documents we have filed with the Securities and Exchange Commission.

Your vote is very important. Because adoption of the merger agreement requires the affirmative vote of the holders of a majority of the outstanding shares of Talk America common stock entitled to vote as of the close of business on the record date for the Special Meeting, a failure to vote will have the same effect as a vote against adoption of the merger agreement.

Whether or not you plan to attend the Special Meeting in person and regardless of the number of shares you own, it is important that your shares be represented and voted at the Special Meeting. Accordingly, you are requested to vote the enclosed proxy at your earliest convenience. Your shares will then be represented at the Special Meeting.

Voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the Special Meeting.

Thank you for your cooperation and continued support.

Sincerely,

Gabriel Battista

*Chairman of the Board*

**THIS PROXY STATEMENT IS DATED NOVEMBER 14, 2006**

**AND IS FIRST BEING MAILED TO STOCKHOLDERS ON OR ABOUT NOVEMBER 16, 2006.**

**Table of Contents**

**TALK AMERICA HOLDINGS, INC.**

**6805 ROUTE 202**

**NEW HOPE, PA 18938**

**(215) 862-1500**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**To Be Held December 15, 2006**

To the Stockholders of

Talk America Holdings, Inc.:

NOTICE IS HEREBY GIVEN that a special meeting of stockholders (the Special Meeting) of Talk America Holdings, Inc., a Delaware corporation (Talk America or the Company), will be held on December 15, 2006, at 10:00 a.m. Eastern Time, at The Lambertville House, 32 Bridge Street, Lambertville, NJ 08530 for the following purposes:

1. To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of September 22, 2006, by and among the Company, Cavalier Telephone Corporation (the Parent) and Cavalier Acquisition Corp., an indirectly wholly owned subsidiary of the Parent (the Merger Sub), pursuant to which, upon the merger becoming effective, each share of common stock, par value \$0.01 per share, of Talk America (other than shares held in the treasury of the Company or owned by the Parent, the Merger Sub or any wholly owned subsidiary of the Parent or the Company and other than shares held by a stockholder who properly demands statutory appraisal rights) will be converted into the right to receive \$8.10 in cash, without interest.
2. To consider and vote on a proposal to adjourn or postpone the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Special Meeting to adopt the merger agreement.
3. To transact such other business as may properly come before the Special Meeting or any reconvened Special Meeting following an adjournment or postponement thereof.

**Whether or not you plan to attend the Special Meeting, we encourage you to vote by proxy as soon as possible. To vote your proxy by mail, mark your vote on the enclosed proxy card, sign it correctly and return it in the envelope provided. To vote your proxy by telephone or electronically via the Internet, see the instructions on the proxy card and have the proxy card available when you call or access the Internet website. If you receive more than one proxy card because your shares are registered in different names or at different addresses, each proxy card should be voted to ensure that all of your shares will be counted. You may revoke your proxy at any time prior to the Special Meeting, and if you are present at the Special Meeting, you may withdraw your proxy and vote in person.**

Only stockholders of record at the close of business on November 3, 2006 are entitled to notice of and to vote at the Special Meeting and at any adjournment or postponement of the Special Meeting. On the record date, we had outstanding 30,771,852 shares of common stock. Each share of common stock is entitled to one vote on each matter to come before the Special Meeting. The presence, in person or by proxy, of holders of a majority of the outstanding shares of common stock entitled to vote as of the record date is necessary to constitute a quorum at the Special Meeting. Adoption of the merger agreement requires the affirmative vote of the holders of a majority of the outstanding shares of Talk America common stock entitled to vote as of the close of business on the record date for the Special Meeting. If you sign, date and mail your proxy card without indicating how you wish to vote, your proxy will be voted in favor of the approval and adoption of the merger agreement. If you fail to return your proxy card or fail to submit your proxy by telephone or the Internet and do not attend the Special Meeting in person, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the Special Meeting and, if a quorum is present, will have the same effect as a vote against the adoption of the merger agreement. All stockholders of record are cordially invited to attend the Special Meeting in person. A complete list of stockholders of record entitled to vote at the Special Meeting will be open to the examination of any stockholder at our executive offices during normal business hours at 6805 Route 202 New Hope, PA 18938 for a period of ten days before the Special Meeting.

## Edgar Filing: TALK AMERICA HOLDINGS INC - Form DEFM14A

This notice and accompanying proxy statement also constitute the Company's notice to its stockholders of the availability of appraisal rights under Section 262 of the Delaware General Corporation Law in connection with the merger.

This notice, accompanying proxy statement and the enclosed proxy card are sent to you by order of the board of directors of Talk America Holdings, Inc.

Aloysius T. Lawn, IV

Secretary

New Hope, Pennsylvania

November 14, 2006

### **YOUR VOTE IS IMPORTANT**

Stockholders of Talk America who do not vote in favor of the adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares if the merger is completed, but only if they submit a written demand for appraisal to the Company before the vote is taken on the merger agreement and they comply with all requirements of Section 262 of the Delaware General Corporation Law. A copy of the applicable statutory provisions is included as Annex C to the accompanying proxy statement, and a summary of these provisions can be found in the section entitled "Dissenters' Rights of Appraisal" in the accompanying proxy statement.

**Please do not send your stock certificates at this time. If the merger is completed, you will be sent instructions regarding the surrender of your stock certificates.**

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>SUMMARY</u>	1
<u>QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER</u>	9
<u>CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION</u>	12
<u>THE PARTIES TO THE MERGER</u>	13
<u>Talk America Holdings, Inc.</u>	13
<u>Cavalier Telephone Corporation</u>	13
<u>Cavalier Acquisition Corp.</u>	13
<u>THE SPECIAL MEETING</u>	14
<u>Time, Place and Purpose of the Special Meeting</u>	14
<u>Record Date, Quorum and Voting Power</u>	14
<u>Required Vote</u>	14
<u>Proxies; Revocation</u>	15
<u>THE MERGER</u>	16
<u>Background of the Merger</u>	16
<u>Reasons for the Merger</u>	20
<u>Recommendation of the Company's Board of Directors</u>	23
<u>Opinion of The Blackstone Group L.P.</u>	23
<u>Financing</u>	30
<u>Litigation Related to the Merger</u>	31
<u>Interests of the Company's Directors and Executive Officers in the Merger</u>	32
<u>Rights Agreement</u>	35
<u>Material U.S. Federal Income Tax Consequences</u>	35
<u>Regulatory Approvals</u>	36
<u>THE MERGER AGREEMENT</u>	38
<u>Effective Time</u>	38
<u>Structure</u>	38
<u>Treatment of the Company's Common Stock, Options and Warrants</u>	38
<u>Exchange and Payment Procedures</u>	39
<u>Certificate of Incorporation and Bylaws</u>	40
<u>Directors and Officers</u>	40
<u>Representations and Warranties</u>	40
<u>Conduct of Our Business Pending the Merger</u>	42
<u>No Solicitation of Transactions</u>	44
<u>Employee Benefits</u>	45
<u>Agreement to Use Reasonable Best Efforts; Further Assurances</u>	46
<u>Conditions to the Merger</u>	47
<u>Termination</u>	48
<u>Termination Fees and Expenses</u>	49
<u>Amendment and Waiver</u>	51
<u>Expenses</u>	51
<u>ADJOURNMENT OF THE SPECIAL MEETING</u>	52
<u>MARKET PRICES OF THE COMPANY'S STOCK</u>	53
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	54
<u>DISSENTERS' RIGHTS OF APPRAISAL</u>	57
<u>SUBMISSION OF STOCKHOLDER PROPOSALS</u>	60
<u>WHERE YOU CAN FIND ADDITIONAL INFORMATION</u>	61
<u>ANNEX A Agreement and Plan of Merger</u>	A-1
<u>ANNEX B Opinion of The Blackstone Group L.P.</u>	B-1
<u>ANNEX C Section 262 of The General Corporation Law of the State of Delaware</u>	C-1

**Table of Contents**

**SUMMARY**

The following summary highlights selected information from this proxy statement and may not contain all of the information that may be important to you. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to or incorporated by reference in this proxy statement. Each item in this summary includes a page reference directing you to a more complete description of that item.

**The Parties to the Merger (Page 13)**

*Talk America Holdings, Inc.*

6805 Route 202

New Hope, Pennsylvania 18938

215.862.1500

Talk America Holdings, Inc., which we refer to as the Company and Talk America, through its subsidiaries, is a leading competitive communications services provider offering integrated voice and data services, including local, long distance, enhanced voice features and dedicated Internet access services, to commercial (primarily small and medium-sized business) and residential customers. We are focused on markets where we have our own networking assets. Today, we are collocated in 316 end offices in Michigan, Ohio, Kentucky, Tennessee, North Carolina, Louisiana, Mississippi, Alabama, Florida and Georgia.

Our business strategy is to continue to expand our network and grow our on-net (that is, our services over our own networking facilities) customer and revenue base through (i) organic growth in our core markets, serving both commercial and residential customers; (ii) additional acquisitions that either supplement our existing markets or offer expansion into new markets; and (iii) enhancement of our product portfolio. Growth in our business, both commercial and residential, on our network will permit us to leverage our investment in our network facilities due to the complementary telecommunication traffic or usage patterns of these customer bases.

*Cavalier Telephone Corporation*

2134 West Laburnum Avenue

Richmond, Virginia 23227

804.422.4100

Cavalier Telephone Corporation, which we refer to as the Parent and Cavalier, is a privately held Delaware corporation and, through its subsidiaries, is a facilities-based competitive local exchange carrier and provider of access and of integrated communications services in an area focused on the Virginia, Pennsylvania, Delaware, Maryland, New Jersey, New York and District of Columbia markets, and extending to other eastern and midwestern states. Through its subsidiaries and over their own network facilities, Cavalier Telephone Corporation provides business and residential customers a range of services, including local and long distance voice, dedicated data, Internet, access, and internet protocol television services.

*Cavalier Acquisition Corp.*

c/o Cavalier Telephone Corporation

2134 West Laburnum Avenue

Richmond, Virginia 23227

804.422.4100

## Edgar Filing: TALK AMERICA HOLDINGS INC - Form DEFM14A

Cavalier Acquisition Corp., which we refer to as the Merger Sub, is a Delaware corporation and an indirect wholly owned subsidiary of the Parent that was formed in connection with the merger by the Parent.

## **Table of Contents**

### **The Special Meeting**

#### *Time, Place and Date (Page 14)*

The Special Meeting will be held on December 15, 2006, starting at 10:00 a.m. Eastern Time, at The Lambertville House, 32 Bridge Street, Lambertville, NJ 08530.

#### *Purpose (Page 14)*

At the Special Meeting, you will be asked:

to consider and vote upon a proposal to adopt the merger agreement;

to consider and vote upon a proposal to adjourn or postpone the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Special Meeting to adopt the merger agreement; and

to consider and transact any other business as may properly come before the Special Meeting or any adjournment or postponement thereof.

The merger agreement provides that the Merger Sub will be merged with and into the Company, and that each outstanding share of the Company's common stock (other than shares held in the treasury of the Company or owned by the Merger Sub, the Parent or any wholly owned subsidiary of the Parent or the Company and other than shares held by a stockholder who properly demands statutory appraisal rights) will be converted into the right to receive \$8.10 in cash, without interest.

The persons named in the accompanying proxy will also have discretionary authority to vote upon other business, if any, that properly comes before the Special Meeting and any adjournments or postponements of the Special Meeting, including any adjournments or postponements for the purpose of soliciting additional proxies to adopt the merger agreement. At this time, our board of directors is unaware of any matters, other than those set forth in the first two bullet points above, that may properly come before the Special Meeting.

#### *Record Date and Voting (Page 14)*

You are entitled to vote at the Special Meeting if you owned shares of Talk America common stock at the close of business on November 3, 2006, the record date for the Special Meeting. Each outstanding share of our common stock on the record date entitles the holder to one vote on each matter submitted to stockholders for approval at the Special Meeting. As of the record date, there were 30,771,852 shares of common stock of Talk America entitled to be voted.

#### *Vote Required (Page 14)*

For us to complete the merger, stockholders holding at least a majority of the shares of our common stock outstanding at the close of business on the record date must vote FOR the adoption of the merger agreement.

#### *Share Ownership of Directors and Executive Officers (Page 54)*

As of November 3, 2006, the record date, the directors and executive officers of Talk America beneficially owned in the aggregate (excluding stock options) approximately 0.5% of the combined voting power of the outstanding shares of Talk America common stock entitled to vote at the Special Meeting.

#### *Voting and Proxies (Page 15)*

Any Talk America stockholder of record entitled to vote may vote by submitting a proxy or by appearing at the Special Meeting. To submit your proxy by mail, mark your vote on the enclosed proxy card, sign it correctly,



## **Table of Contents**

and return it in the envelope provided. To submit your proxy by telephone or electronically via the Internet, see the instructions on the proxy card and have the proxy card available when you call or access the Internet website. If your shares are held in street name by your broker, you should instruct your broker how to vote your shares using the instructions provided by your broker.

### *Revocability of Proxy (Page 15)*

Any Talk America stockholder of record who submits a proxy by mail, telephone or the Internet may revoke the proxy at any time before it is voted in any one of the following three ways:

filing with the Secretary of Talk America, at or before the Special Meeting, a written notice of revocation that is dated a later date than the proxy;

submitting, at or before the Special Meeting, a later-dated proxy relating to the same shares, by mail to the Secretary of Talk America or by telephone or the Internet in accordance with the instructions on the proxy card; or

attending the Special Meeting and voting in person by ballot.

Simply attending the Special Meeting will not constitute revocation of a proxy. If you have instructed your broker to vote your shares, the above-described options for revoking your proxy do not apply and instead you must follow the directions provided by your broker to change these instructions.

### **When the Merger Will Be Completed**

We are working to complete the merger as soon as possible. We anticipate completing the merger by December 31, 2006, subject to receipt of stockholder approval and satisfaction of the other closing conditions under the merger agreement, including the expiration or termination of the waiting period under federal antitrust laws and the receipt of applicable consents from the Federal Communications Commission (the FCC) and approvals from certain state public service or public utility commissions (or similar state regulatory agencies) (State PUCs).

### **Board Recommendation (Page 23)**

After careful consideration, our board of directors:

has determined that the merger and the merger agreement are advisable, fair to and in the best interests of the Company's stockholders;

has approved the merger agreement; and

recommends that Talk America's stockholders vote FOR the adoption of the merger agreement.

### **Opinion of The Blackstone Group L.P. (Page 23 and Annex B)**

The Blackstone Group L.P. (Blackstone) has delivered to the Company's board of directors its opinion dated September 22, 2006 to the effect that, as of that date and based upon and subject to the matters and assumptions stated in that opinion, the merger consideration of \$8.10 per share in cash to be received by the Company's stockholders pursuant to the merger agreement was fair from a financial point of view to the Company's stockholders. The opinion is not a recommendation as to how any of our stockholders should vote with respect to the merger agreement or the merger. The full text of the written opinion of Blackstone, which sets forth the matters considered and assumptions made in connection with its opinion, is attached as Annex B to this proxy statement. We recommend that you read the entire opinion carefully. Under our engagement agreement with Blackstone, we agreed to pay Blackstone a quarterly retention fee of \$100,000 and a fee of \$500,000 upon delivery of their opinion. We have also agreed to pay Blackstone a transaction fee of approximately \$2.4 million if and when the merger is consummated, against

which the retention and opinion fees will be credited.

## **Table of Contents**

### **Financing (Page 30)**

In connection with the merger, the Parent will cause approximately \$252.8 million in cash to be paid to our stockholders and holders of stock options and warrants. These payments are expected to be funded by a combination of credit facilities provided to the Parent and its subsidiary, CavTel Holdings, LLC, or CavTel. The Parent and CavTel have received a commitment letter from Wachovia Bank, National Association and Wachovia Capital Markets, LLC pursuant to which Wachovia Bank, National Association has committed to provide the Parent and CavTel with credit facilities in the aggregate amount of \$435 million, subject to the satisfaction of the conditions contained in the commitment letter. The closing of the merger and the obligations of the Parent and the Merger Sub under the merger agreement are not, however, conditioned on the Parent's arranging this credit facility or any other financing.

### **Treatment of the Company's Common Stock, Options and Warrants (Page 38)**

At the effective time of the merger, each share of the Company's common stock outstanding immediately prior to the effective time of the merger will be canceled and converted into the right to receive \$8.10 in cash, without interest.

The merger agreement provides that all outstanding Talk America stock options issued pursuant to Talk America's stock option plans, whether vested or unvested, will be canceled as of the effective time of the merger, and the holder of each stock option that has an exercise price of less than \$8.10 will receive from the surviving corporation as soon as practicable thereafter an amount in cash, less any applicable withholding taxes, equal to the product of:

the number of shares of our common stock subject to each stock option as of the effective time of the merger, multiplied by

the excess of \$8.10 over the exercise price per share of common stock subject to such option.

The merger agreement provides that all outstanding Talk America warrants will be canceled as of the effective time of the merger. While the merger agreement provides for a cash payment for in-the-money warrants, similar to the provision for options, there are no warrants outstanding that have an exercise price of less than \$8.10.

The merger agreement further provides that all payments to holders of the Company's common stock, or of options or warrants for our common stock, will be less any applicable withholding taxes.

### **Interests of the Company's Directors and Executive Officers in the Merger (Page 32)**

Some of our executive officers and members of our board of directors have financial interests in the merger that are different from, or in addition to, their interests as our stockholders generally. Our board of directors was aware of these interests and considered the following, among other matters, in approving the merger agreement:

certain of our executive officers are parties to employment agreements with the Company that provide for severance payments by the Company if they are terminated or they resign for specified reasons prior to or following the effective time of the merger; the terms of the merger agreement permit the payment of up to \$4.291 million in such severance payments on the closing date of the merger and the Company proposes to make the full amount of such payments on the closing date;

under the terms of the merger agreement, our board of directors is permitted, in its sole discretion, to award and pay bonuses to our employees, including our executive officers (but not including any of our four non-executive directors), at or prior to the closing date of the merger, in an aggregate amount up to \$2.5 million; while our board has generally indicated that it expects to award some discretionary bonuses and while our board has not yet made any decision as to which, if any, persons would be

## **Table of Contents**

awarded bonuses or any amounts thereof, it could determine to award the full amount permitted and to award the full amount among some or all of our executive officers;

our directors and executive officers will have their vested and unvested stock options canceled as of the effective time of the merger, and they will receive cash payments for each share underlying their options equal to the excess, if any, of \$8.10 per share over the exercise price per share of their stock options, less any applicable withholding taxes. As of November 10, 2006, our directors and executive officers held stock options to acquire an aggregate of 2,848,495 shares, of which options for 2,208,497 shares were vested and of which options for 647,320 shares had an exercise price less than \$8.10; based on such options holdings, our directors and executive officers as a group would be entitled to an aggregate of cash payments in respect of such options of approximately \$2,777,800 upon consummation of the merger;

the merger agreement provides for indemnification and insurance arrangements for our current and former directors and officers that will continue for six years following the effective time of the merger; and

although Cavalier has not finalized any agreements with any executive officers of Talk America, Cavalier expects to enter into employment agreements with several of our executive officers, whereby each would continue to serve as an officer of the Parent after the closing.

### **Rights Agreement (Page 35)**

Prior to the execution of the merger agreement, we amended our rights agreement to exempt the execution of the merger agreement and the consummation of the transactions contemplated by the merger agreement in accordance with the terms thereof.

### **Material U.S. Federal Income Tax Consequences (Page 35)**

The merger will be a taxable transaction to you. For U.S. federal income tax purposes, your receipt of cash in exchange for your shares of Talk America common stock generally will cause you to recognize a gain or loss measured by the difference, if any, between the cash you receive in the merger and your adjusted tax basis in your shares of Talk America common stock. You should consult your own tax advisor for a full understanding of how the merger will affect your taxes.

### **Regulatory Approvals (Page 36)**

The Hart-Scott-Rodino Act provides that transactions such as the merger may not be completed until certain information has been submitted to the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice and certain waiting period requirements have been satisfied. On October 6, 2006, the Company and the Parent each filed a Notification and Report Form with the Antitrust Division and the Federal Trade Commission and requested an early termination of the waiting period. We received notice that the waiting period had been terminated on October 16, 2006.

Certain of the Company's subsidiaries provide communications services that are regulated by the FCC and/or State PUCs. As providers of such services, those subsidiaries hold authorizations issued by the FCC and State PUCs. Permission from or notices to many of these regulatory agencies is required to transfer control of the subsidiaries and therefore to complete the transfer of control of the Company.

Under the Communications Act of 1934, as amended, the FCC must approve the transfer of control to the Parent of the Company and those subsidiaries of the Company that hold FCC licenses and authorizations. The FCC must determine whether the Parent is qualified to control such licenses and authorizations and whether the transfer is consistent with the public interest. The Company and the Parent filed a transfer of control application with the FCC on October 2, 2006.

## **Table of Contents**

Certain subsidiaries of the Company also hold certificates and authorizations issued by State PUCs in all U.S. states (except Alaska) and the District of Columbia, where they provide intrastate telecommunications services. Many of the State PUCs in each of the states where Company subsidiaries operate must either approve the transactions contemplated by the merger agreement or require that formal notice of the transactions be provided to them. As of October 2, 2006, the Company and the Parent had sent for filing the necessary applications and notices with these State PUCs.

The completion of the merger also is subject to compliance with applicable laws of the State of Delaware.

### **Litigation Relating to the Merger (Page 31)**

We are aware of five asserted class actions related to the proposed merger filed against our individual directors and us. Each alleges, among other things, that our directors have breached their fiduciary duty by accepting the merger and generally seeks various forms of relief, including injunctive relief, including against the consummation of the merger, unspecified money damages and plaintiff's attorneys' fees and expenses. We believe that these lawsuits are without merit and plan to defend them vigorously. Additional lawsuits pertaining to the proposed merger could be filed in the future.

### **Procedure for Receiving Merger Consideration (Page 39)**

As soon as practicable after the effective time of the merger, a paying agent appointed by the Parent will mail a letter of transmittal and instructions to Talk America stockholders. The letter of transmittal and instructions will tell you how to surrender your Talk America common stock certificates in exchange for the merger consideration. You should not return your stock certificates with the enclosed proxy card, and you should not forward your stock certificates to the paying agent without a letter of transmittal.

### **No Solicitation of Transactions (Page 44)**

The merger agreement contains restrictions on our ability to solicit or engage in discussions or negotiations with a third party regarding specified transactions involving the Company. Notwithstanding these restrictions, under certain circumstances, our board of directors may respond to an unsolicited written bona fide proposal for an alternative acquisition or terminate the merger agreement and enter into an acquisition agreement with respect to a superior proposal.

### **Conditions to Closing (Page 47)**

Before we can complete the merger, a number of conditions must be satisfied. These include, among others:

the receipt of Company stockholder approval;

the absence of, or of any pending proceeding seeking, any governmental order, decree, judgment, injunction or other ruling that prevents or prohibits the consummation of the merger;

the expiration or termination of the waiting period under the Hart-Scott-Rodino Act, which condition has been satisfied;

the receipt of applicable consents from the FCC;

the receipt of applicable approvals from the State PUCs that regulate the Company's business or the business of any of its subsidiaries;

## Edgar Filing: TALK AMERICA HOLDINGS INC - Form DEFM14A

the truth and correctness of our representations and warranties as of the date of the merger agreement and, except where the failure of our representations and warranties to be true and correct would not reasonably be expected to have a material adverse effect on us and our subsidiaries, individually or in the aggregate, the truth and correctness of our representations and warranties (without giving effect for

**Table of Contents**

any materiality or material difference qualification therein) as of the closing date or as of the earlier date for such representations and warranties as expressly relate to an earlier date, and the truth and correctness of our representations and warranties with respect to authority and approvals, absence of material adverse change and brokers as of the closing date as if made on and as of the closing date;

since September 22, 2006, the date of execution of the merger agreement, no material adverse effect with respect to the Company shall have occurred and be continuing.

we meet a defined minimum financial performance measure based on our reported operating income for the quarter ended September 30, 2006 as adjusted for a number of items, which condition has been satisfied; and

the performance and compliance, in all material respects, by us of our agreements and conditions in the merger agreement.

**Termination of the Merger Agreement (Page 48)**

Talk America and the Parent may agree in writing to terminate the merger agreement at any time without completing the merger, even after the stockholders of Talk America have adopted the merger agreement. The merger agreement may also be terminated in certain other circumstances, including:

by either the Parent or the Company if:

our stockholders fail to adopt the merger agreement at the Special Meeting of the stockholders or any adjournment of the Special Meeting;

the closing has not occurred on or before January 31, 2007, which we refer to as the termination date, so long as the failure to complete the merger is not the result of the failure of the terminating party to comply with the terms of the merger agreement;

there is any law or final, non-appealable government order, decree or ruling that prevents completion of the merger, so long as such law, government order, decree or ruling is not the result of the failure of the terminating party to fulfill its obligations under the merger agreement; or

there is a breach by the non-terminating party of its representations, warranties, covenants or agreements in the merger agreement such that the closing conditions would not be satisfied, which breach has not been cured within 20 business days (or is incapable of being cured before the termination date);

by the Company, prior to adoption of the merger agreement, if we receive a superior proposal in accordance with the terms of the merger agreement, but only after we have provided the Parent a three-business-day period to make an offer that is at least as favorable as the superior proposal;

by the Parent, if:

our board of directors withdraws or modifies its recommendation that the Company's stockholders vote to adopt the merger agreement or recommends or approves another takeover proposal;

our board of directors fails to include in our proxy statement its recommendation that the Company's stockholders vote to adopt the merger agreement;

our board of directors fails to publicly reaffirm its recommendation of the merger agreement and the merger within ten days after the Parent has requested in writing that our board of directors reaffirm its recommendation;

the Company fails to recommend rejection of a tender or exchange offer within ten days after the commencement of such tender or exchange offer;

a takeover proposal is publicly announced and the Company fails to issue a press release within ten days after the announcement that reaffirms the recommendation of our board of directors that the Company's stockholders vote in favor of the merger; or

**Table of Contents**

the Company fails to call, give notice of, convene and hold the special stockholders meeting and timely mail this proxy statement, which is not cured within 10 business days following receipt by the Company of a notice of such breach.

**Termination Fees and Expenses (Page 49)**

Under certain circumstances, in connection with the termination of the merger agreement, we will be required to pay the Parent a termination fee of \$6.25 million or up to an additional \$1.25 million for reimbursement of expenses or both.

**Market Prices of the Company's Common Stock (Page 53)**

Our common stock is listed on The NASDAQ Stock Market® ( NASDAQ ) and trades on The NASDAQ Global Select Market under the symbol TALK . On September 21, 2006, which was the last trading day before we announced the merger, the Company's common stock closed at \$6.57 per share. On September 27, 2006, which was the last trading day before the Sun Capital Securities Group, LLC conditional proposal to acquire the Company's common stock at \$9.00 per share was reported, the Company's common stock closed at \$8.32 per share. The closing sale price of our common stock on NASDAQ on October 23, 2006, the date on which we announced our receipt of Sun Capital's advice that it would not proceed with a definitive offer to acquire our common stock, was \$7.86 per share. On November 10, 2006, the latest practicable trading day before the printing of this proxy statement, the Company's common stock closed at \$8.02 per share.

**Dissenters' Rights of Appraisal (Page 57 and Annex C)**

Delaware law provides you with appraisal rights in connection with the merger. This means that you are entitled to have the value of your shares determined by the Delaware Court of Chancery and to receive payment based on that valuation. The ultimate amount you receive as a dissenting stockholder in an appraisal proceeding may be more or less than, or the same as, the amount you would have received under the merger agreement.

To exercise your appraisal rights, you must deliver a written objection to the merger to the Company at or before the vote on the adoption of the merger agreement at the Special Meeting and you must not vote in favor of the adoption of the merger agreement. Your failure to follow exactly the procedures specified under Delaware law will result in the loss of your appraisal rights.

A copy of Section 262 of the General Corporation Law of the State of Delaware (the DGCL ) is attached to this proxy statement as Annex C.

**Table of Contents**

**QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER**

The following discussion addresses briefly some questions you may have regarding the Special Meeting and the proposed merger. These questions and answers may not address all questions that may be important to you as a stockholder of Talk America Holdings, Inc. Please refer to the more detailed information contained elsewhere in this proxy statement, the annexes to this proxy statement and the documents referred to or incorporated by reference in this proxy statement. In this proxy statement, the terms Talk America, Company, we, our, ours and us refer to Talk America Holdings, Inc. and its subsidiaries.

**Q: What is the proposed transaction?**

A: The proposed transaction is the acquisition of the Company pursuant to an Agreement and Plan of Merger (the merger agreement), dated as of September 22, 2006, by and among the Company, Cavalier Telephone Corporation, a Delaware corporation (the Parent and Cavalier), and Cavalier Acquisition Corp., a Delaware Corporation, an indirect wholly-owned subsidiary of the Parent (the Merger Sub). Once the merger agreement has been adopted by Talk America's stockholders and the other closing conditions under the merger agreement have been satisfied or waived, the Merger Sub will merge with and into Talk America (the merger). Talk America will be the surviving corporation in the merger (the surviving corporation) and will become a wholly owned subsidiary of the Parent.

**Q: What will I receive in the merger?**

A: Upon completion of the merger, you will receive \$8.10 in cash, without interest, for each share of our common stock that you own. For example, if you own 100 shares of our common stock, you will receive \$810 in cash in exchange for your Talk America shares.

**Q: Where and when is the Special Meeting?**

A: The Special Meeting will take place at The Lambertville House, 32 Bridge Street, Lambertville, NJ 08530, on December 15, 2006, at 10:00 a.m. Eastern Time.

**Q: What vote of our stockholders is required to adopt the merger agreement?**

A: For us to complete the merger, stockholders holding at least a majority of the shares of our common stock outstanding at the close of business on the record date must vote FOR the adoption of the merger agreement.

**Q: How does the Company's board of directors recommend that I vote?**

A: Our board of directors recommends that you vote FOR the proposal to adopt the merger agreement. You should read The Merger Reasons for the Merger for a discussion of the factors that our board of directors considered in deciding to recommend the adoption of the merger agreement.

**Q: What do I need to do now?**

Edgar Filing: TALK AMERICA HOLDINGS INC - Form DEFM14A

A: We urge you to read this proxy statement carefully, including its annexes, and to consider how the merger affects you. If you are a stockholder of record, then you should, as soon as possible, vote your proxy:

by mail by completing, dating and signing your proxy card and returning it in the enclosed return envelope; or

by telephone or electronically by the Internet by following the instructions on your proxy card;

**Table of Contents**

so that your shares can be voted at the Special Meeting of our stockholders. If you fail to submit your proxy and you do not vote in person at the Special Meeting, it will have the same effect as voting against the merger. You are urged to act promptly in submitting your proxy.

**Q: If my shares are held in street name by my broker, will my broker vote my shares for me?**

A: Yes, but only if you provide instructions to your broker on how to vote. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares. Without those instructions, your shares will not be voted, which will have the same effect as voting against the merger.

**Q: Can I change my vote after I have mailed my proxy card?**

A: Yes. You can change your vote at any time before your proxy is voted at the Special Meeting. You may revoke your proxy by notifying the Secretary of Talk America in writing or by submitting a new proxy card, by mail, telephone or the Internet, in each case dated after the date of the proxy being revoked. In addition, your proxy may be revoked by attending the Special Meeting and voting in person. However, simply attending the Special Meeting will not revoke your proxy. If you have instructed a broker to vote your shares, the above-described options for changing your vote do not apply and instead you must follow the instructions received from your broker to change your vote.

**Q: Are appraisal rights available?**

A: Yes. Under Delaware law, holders of our common stock who do not vote in favor of adopting the merger agreement will have the right to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery if the merger is completed, but only if they submit a written demand for an appraisal prior to the vote on the adoption of the merger agreement and they comply with the Delaware law procedures explained in this proxy statement. This appraisal amount could be more than, the same as or less than the amount a stockholder would be entitled to receive under the terms of the merger agreement.

**Q: Is the merger expected to be taxable to me?**

A: Yes. The receipt of \$8.10 in cash for each share of our common stock pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes. For U.S. federal income tax purposes, generally you will recognize a gain or loss as a result of the merger measured by the difference, if any, between \$8.10 per share and your adjusted tax basis in that share. You should read *The Merger Material U.S. Federal Income Tax Consequences* for a more complete discussion of the U.S. federal income tax consequences of the merger. Tax matters can be complicated, and the tax consequences of the merger to you will depend on your particular tax situation. You should also consult your tax advisor on the tax consequences of the merger to you.

**Q: What will the holders of the Company's stock options and warrants receive in the merger?**

A: As of the effective time of the merger, all stock options and warrants to purchase shares of Company common stock will be canceled and the holder of each stock option or warrant, as the case may be, with a per share exercise price lower than the \$8.10 per share merger consideration will be entitled to receive a cash payment in an amount equal to the excess, if any, of the \$8.10 per share merger consideration over the exercise price of such option or warrant, less any applicable withholding taxes. However, none of the warrants outstanding has a per share exercise price lower than the merger consideration, so no payments will be made in respect of any warrants.

**Q: When do you expect the merger to be completed?**

A: We are working toward completing the merger as quickly as possible, and we anticipate that it will be completed by December 31, 2006. In order to complete the merger, we must obtain stockholder approval,

**Table of Contents**

and the other closing conditions under the merger agreement must be satisfied, including the expiration or termination of the waiting period under federal antitrust laws and the receipt of applicable approvals from the FCC and the State PUCs that regulate the Company's business or the business of any of its subsidiaries. See The Merger Agreement Conditions to the Merger.

**Q: Should I send in my stock certificates now?**

A: No. Shortly after the merger is completed, you will receive a letter of transmittal with instructions informing you how to send your stock certificates to the paying agent in order to receive the merger consideration. You should use the letter of transmittal to exchange Talk America stock certificates for the merger consideration to which you are entitled as a result of the merger. **DO NOT SEND ANY STOCK CERTIFICATES WITH YOUR PROXY.**

**Q: Who can help answer my other questions?**

A: If you have more questions about the merger, you should contact Aloysius T. Lawn, IV, Executive Vice President General Counsel and Secretary, at (215) 862-1500. If your broker holds your shares, you should also call your broker for additional information.

**Table of Contents**

**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION**

This proxy statement and the documents to which we refer you in this proxy statement contain forward-looking statements based on estimates and assumptions. Forward-looking statements include information concerning possible or assumed future results of operations of the Company, the expected completion and timing of the merger and other information relating to the merger. There are forward-looking statements throughout this proxy statement, including, among others, under the headings Summary, The Merger and The Merger Opinion of The Blackstone Group L.P., and in statements containing the words believes, plans, expects, anticipates, intends, estimates or other similar expressions. For each of these statements, the Company claims the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. You should be aware that forward-looking statements involve known and unknown risks and uncertainties. Although we believe that the expectations reflected in these forward-looking statements are reasonable, we cannot assure you that the actual results or developments we anticipate will be realized or, even if realized, that they will have the expected effects on the business or operations of the Company. These forward-looking statements speak only as of the date on which the statements were made, and we undertake no obligation to publicly update or revise any forward-looking statements made in this proxy statement or elsewhere as a result of new information, future events or otherwise. In addition to other factors and matters contained or incorporated in this document, we believe the following factors could cause actual results to differ materially from those discussed in the forward-looking statements:

the risk that the merger may not be consummated in a timely manner, if at all;

the occurrence of any event, change or other circumstance that could give rise to the termination of the merger agreement;

the outcome of any legal proceeding against us and others that may be instituted following announcement of the merger agreement;

risks related to diverting management's attention from ongoing business operations;

our dependence on key personnel;

risks regarding employee retention;

changes in regulatory requirements;