

VONAGE HOLDINGS CORP

Form 8-K

November 05, 2014

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 4, 2014

VONAGE HOLDINGS CORP.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-32887
(Commission
File Number)

11-3547680
(IRS Employer
Identification No.)

23 Main Street, Holmdel, NJ 07733
(Address of Principal Executive Offices) (Zip Code)
Registrant's telephone number, including area code: (732) 528-2600

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

Merger Agreement

On November 4, 2014 (the “Signing Date”), Vonage Holdings Corp. (“Vonage”) entered into a definitive agreement to acquire Telesphere Networks Ltd. (“Telesphere”), an industry-leading provider of Unified Communications-as-a-Service (UCaaS) solutions to larger enterprises in the small and medium business (SMB) sector. The acquisition will occur pursuant to an Agreement and Plan of Merger (the “Merger Agreement”), by and among Vonage, Thunder Acquisition Corp., a Washington corporation and newly formed wholly owned subsidiary of Vonage (“Merger Sub”), Telesphere, and each of John Chapple and Gary O’Malley, as representative of the securityholders of Telesphere (collectively, the “Representative”), pursuant to which Merger Sub will, on the terms and subject to the conditions thereof, merge with and into Telesphere with Telesphere surviving as a wholly owned subsidiary of Vonage (the “Merger”).

Consideration

Vonage will acquire Telesphere for \$114 million, subject to adjustment for the amount of Telesphere’s working capital at closing, and subject to reduction for Telesphere’s outstanding indebtedness and unpaid transaction expenses as of closing. Approximately 80% of the purchase price will be paid in cash and the remaining 20% will be paid through the issuance of shares of Vonage common stock.

Pursuant to the Merger Agreement, at the effective time of the Merger (the “Effective Time”), all outstanding options to purchase Telesphere common stock will be accelerated, such that they are fully vested and exercisable as of the Effective Time, and cashed out at the spread between the exercise price and the applicable merger consideration. All options to purchase Telesphere common stock that are out-of-the-money will be cancelled and terminated with no right to receive payment.

The number of shares of Vonage common stock comprising the stock portion of the merger consideration will be calculated prior to the Effective Time using the average of the closing price of Vonage common stock on the New York Stock Exchange, as reported by the New York Stock Exchange, for the 15 consecutive full trading days ending on the Signing Date.

The shares of Vonage common stock issued pursuant to the Merger will be issued only to “accredited investors” within the meaning of Regulation D promulgated under the Securities Act of 1933 (the “Securities Act”). No public offering of securities is contemplated.

Representations, Warranties and Indemnities

The Merger Agreement contains customary representations, warranties and covenants by the parties, as well as indemnification rights of both parties. A portion of the purchase price will be deposited into escrow to secure the indemnification obligations under the Merger Agreement of Telesphere’s preferred stockholders, common stockholders and optionholders in respect of any breach of Telesphere’s representations, warranties or covenants set forth in the Merger Agreement and in respect of certain other matters.

Approvals

Each of the board of directors of Vonage, Merger Sub and Telesphere have approved the Merger and Merger Agreement. In addition, following execution of the Merger Agreement, certain preferred stockholders of Telesphere together constituting (a) a majority of the preferred and common stockholders of Telesphere (voting together as a single class on an as-converted to common stock basis) and (b) a majority of the preferred stockholders of Telesphere (voting together as a separate class on an as-converted to common stock basis), delivered a written consent whereby they approved the Merger and adopted the Merger Agreement. No further board or stockholder approvals are required to approve the Merger or adopt the Merger Agreement.

In addition, certain holders of shares of Telesphere preferred stock have delivered support agreements (the “Support Agreements”), pursuant to which they have agreed to support the Merger and vote their shares of Telesphere stock against certain alternative transactions relating to Telesphere. The Support Agreements also contain customary provisions pertaining to waivers of dissenters’ rights, the use of confidential information related to the Company and an agreement to cover certain indemnification claims as set forth in the Merger Agreement.

Closing Conditions

The completion of the Merger is subject to customary closing conditions including the absence of any material adverse effect on the business and operations of Telesphere and the execution of employment arrangements with certain individuals who are currently employees of Telesphere.

Qualification of Description

The foregoing description of the Merger and the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit 2.1 hereto, and is incorporated into this report by reference. The Merger Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about Vonage or Telesphere. In particular, the assertions embodied in the representations and warranties contained in the Merger Agreement are qualified by information in a confidential disclosure letter provided by Telesphere to Vonage in connection with the signing of the Merger Agreement (the "Disclosure Letter"). The Disclosure Letter contains information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Merger Agreement. Moreover, certain representations and warranties in the Merger Agreement were used for the purpose of allocating risk between Vonage and Telesphere rather than establishing matters as facts. Accordingly, you should not rely on the representations and warranties in the Merger Agreement as characterizations of the actual state of any facts about Vonage or Telesphere.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to: (i) statements about the benefits of the Merger; (ii) future financial and operating results following the Merger; (iii) the combined company's plans, objectives, expectations and intentions with respect to future operations, products and services; (iv) the competitive position and opportunities of the combined company; (v) the impact of the Merger on the market for the combined company's products; and (vi) the timing of the completion of the Merger. In addition, words such as "anticipate," "believe," "budget," "could," "estimate," "expect," "forecast," "intend," "may," "potential," "predict," "project," "should," "will" and similar expressions are intended to identify such forward-looking statements. Such forward-looking statements are based upon the current beliefs and expectations of Vonage's management and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and generally beyond the control of Vonage. The risks and uncertainties that could cause our results to differ materially from those expressed or implied by such forward-looking statements include, but are not limited to: (a) risks related to the integration of Telesphere into Vonage and the anticipated future benefits resulting from the acquisition of Telesphere; (b) Vonage's or the combined company's ability to react to trends and challenges in our business and the markets in which we operate; (c) Vonage's or the combined company's ability to anticipate market needs or develop new or enhanced products to meet those needs; (d) the adoption rate of Vonage's or the combined company's products; (e) Vonage's or the combined company's ability to establish and maintain successful relationships with our distribution partners; (f) our ability to compete in our industry; (g) fluctuations in demand, sales cycles and prices for Vonage's or the combined company's products and services; (h) shortages or price fluctuations in Vonage's or the combined company's supply chain; (i) Vonage's or the combined company's ability to protect intellectual property rights; (j) general political, economic and market conditions and events; (k) the expense and impact of legal proceedings; and (l) other risks and uncertainties described more fully in Vonage's documents filed with or furnished to the Securities and Exchange Commission. All forward-looking statements in this document are based on information available as of the date hereof, and Vonage assumes no obligation to update these forward-looking statements. Vonage reserves the right to modify future business or product plans at any time.

Item 3.02. Unregistered Sales of Equity Securities.

As described in Item 1.01 above, Vonage has entered into the Merger Agreement pursuant to which Vonage will issue shares of common stock as part of the consideration upon consummation of the Merger. The number of shares of Vonage common stock to be issued will be calculated prior to the Effective Time using the average of the closing price of Vonage common stock on the New York Stock Exchange, as reported by the New York Stock Exchange, for the 15 consecutive full trading days ending on the Signing Date.

The issuance and sale of the shares of Vonage common stock is exempt from registration under Section 4(a)(2) of the Securities Act because the transaction does not involve a public offering. Vonage has not engaged in general solicitation or advertising with regard to the issuance and sale of the Vonage common stock to be issued in the Merger.

The information disclosed in Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.02 by reference. The disclosure in this Item 3.02 is qualified by reference to the information set forth in Item 1.01 of this Current Report on Form 8-K.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number Description

2.1* Agreement and Plan of Merger, dated November 4, 2014, by and among Vonage, Thunder Acquisition Corp., Telesphere and the Representative

99.1 Press Release of Vonage issued on November 5, 2014

* Schedules and certain exhibits to the Merger Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Vonage hereby undertakes to furnish supplementally copies of any omitted schedules and exhibits upon request by the SEC.

SIGNATURE

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 hereunto duly authorized.

VONAGE HOLDINGS CORP.

Date: November 5, 2014

By: /s/ David T. Pearson
David T. Pearson
Chief Financial Officer

Exhibit Index

Exhibit Number	Description
2.1*	Agreement and Plan of Merger, dated November 4, 2014, by and among Vonage, Thunder Acquisition Corp., Telesphere and the Representative
99.1	Press Release of Vonage issued on November 5, 2014

* Schedules and certain exhibits to the Merger Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Vonage hereby undertakes to furnish supplementally copies of any omitted schedules and exhibits upon request by the SEC.