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JOHN A. RUTH  
ALICIA EMBLEY TURNER

October 2, 2006

The Honorable Colleen M. Dale  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED<sup>2</sup>**  
OCT 02 2006  
Missouri Public  
Service Commission

Re: Talk America Holdings, Inc.  
Talk America, Inc.  
LDMI Telecommunications, Inc.  
Cavalier Telephone Corp.

Dear Judge Dale:

Please find enclosed for filing in the referenced matter the original and five copies of a Joint Application.

Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley  
comleym@ncrpc.com

MWC:ab  
Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
Danielle Burt

**BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION**

\_\_\_\_\_)  
Joint Application of \_\_\_\_\_)  
\_\_\_\_\_)  
**Talk America Holdings, Inc.** \_\_\_\_\_)  
**Talk America, Inc.** \_\_\_\_\_)  
**LDMI Telecommunications, Inc.** \_\_\_\_\_)  
\_\_\_\_\_)  
and \_\_\_\_\_)  
\_\_\_\_\_)  
**Cavalier Telephone Corp.** \_\_\_\_\_)  
\_\_\_\_\_)  
For Approval of an Indirect Transfer of Control \_\_\_\_\_)  
and Related Financing Transactions \_\_\_\_\_)  
\_\_\_\_\_)

**FILED<sup>2</sup>**  
OCT 02 2006  
Missouri Public  
Service Commission

**JOINT APPLICATION**

Cavalier Telephone Corporation ("CTC"), a Delaware corporation and non-certificated holding company,<sup>1</sup> and Talk America Holdings, Inc. ("TA Holdings"),<sup>2</sup> with and on behalf of its Missouri-certificated operating subsidiaries Talk America, Inc. ("Talk America") and LDMI Telecommunications, Inc. ("LDMI"), (collectively, "Applicants"), through their undersigned counsel and pursuant to Section 392.300 RSMo 2000 and 4 CSR 240-2.060 of the Rules of the Missouri Public Service Commission ("Commission") and contingent on the Commission accepting jurisdiction over this matter,<sup>3</sup> hereby respectfully request Commission approval to enable the parties to consummate a transaction whereby Holdings will acquire indirect control of

<sup>1</sup> CTC directly wholly owns Cavtel Holdings, LLC, a Delaware limited liability company ("Holdings"), which itself is the non-certificated parent of all other entities in the "Cavalier family" of companies. As such, CTC is the direct parent of Holdings, and Holdings is the direct and indirect parent of, *inter alia*, the certificated operating subsidiaries described herein.

<sup>2</sup> TA Holdings, a Delaware corporation, is a non-certificated holding company whose direct and indirect subsidiaries include, *inter alia*, the operating companies described herein.

<sup>3</sup> As described more fully below, Applicants believe that the proposed transaction may not be within the jurisdiction of the Commission. Nevertheless, Applicants file this Application out of an abundance of caution should the Commission determine otherwise.

Talk America and LDMI, competitive carriers that hold authority from the Commission to provide telecommunications services in Missouri. Although the proposed transaction will result in a change in the ultimate ownership of Talk America and LDMI, no transfer of certificates, assets or customers will result. Talk America and LDMI will continue to provide service to their existing customers in Missouri pursuant to those authorizations under the same rates, terms and conditions. Accordingly, this acquisition will be transparent to the customers of Talk America and LDMI. In connection herewith, the Applicants request approval to enter into certain related financing transactions required to consummate the acquisition (such acquisition and related financing transactions hereinafter, the "Transaction"). Although none of the authorized carriers in Missouri will be a borrower, each will be a co-guarantor.

Applicants request that the Commission act expeditiously to grant the authority requested herein prior to December 10, 2006, so that Applicants can timely consummate the proposed Transaction as soon as possible thereafter to meet important business objectives.

In support of their Application, Applicants state as follows:

**I. DESCRIPTION OF THE APPLICANTS**

**A. Cavalier Telephone Corporation ("CTC")**

CTC is a Delaware corporation whose business address is 2134 West Laburnum Avenue, Richmond, Virginia 23227. CTC is the sole member of Holdings.<sup>4</sup> Holdings' wholly-owned direct and indirect subsidiaries include Cavalier Telephone LLC ("Cavalier"), Cavalier Telephone Mid-Atlantic, LLC ("CTMA"), Elantic Telecom, Inc. ("Elantic") and/or Cavalier

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<sup>4</sup> Commission rule 4 CSR 240-2.060 (C) requires an applicant that is a foreign corporation to attach a certificate from the Missouri Secretary of State's office that the applicant is authorized to do business in the State of Missouri. Applicants respectfully request that the Commission waive this requirement pursuant to 4 CSR 240-2.015. CTC has no present intention of engaging in business in the State of Missouri and its role at this time is to serve as the acquiring company for control of Talk America and LDMI. The nature of CTC's stock ownership will not require it to generally engage in any business in the state of Missouri, and its joint application here is an isolated transaction. The Applicants submit that good cause is present for the waiver.

Networks, LLC ("Networks") as well as Cavalier Acquisition Corp. ("Acquisition"), a Delaware corporation formed for the specific purpose of effecting the Transaction described herein. Although neither CTC nor Holdings is certificated in any jurisdiction to provide telecommunications services, Cavalier, CTMA, Networks and Elantic hold domestic and international Section 214 authorizations from the FCC.

CTC's indirect operating subsidiaries employ over 1,000 people to bring a wide array of telephone and data service offerings. Through its fiber network, CTC's operating subsidiaries are able to deliver advanced services more cost effectively and more quickly than traditional CLECs. As proof of this, in May of 2006, Cavalier became the first CLEC to launch a commercially-available IPTV product. This allows Cavalier to compete uniquely and aggressively against the traditional telephone companies and cable companies with a compelling Triple Play of voice, Internet and digital TV. During the past 8 years, Cavalier has consistently delivered revenue growth across its business, residential and wholesale services segment by leveraging multiple distribution channels, acquisition strategies and network infrastructure. Cavalier currently has 215,000 residential customers, 50,000 DSL customers and 35,000 business customers.

**B. Talk America Holdings, Inc. ("TA Holdings")**

TA Holdings is a publicly-held Delaware corporation, headquartered in New Hope, Pennsylvania. TA Holdings is the parent of authorized local and long distance telecommunications carriers Talk America, LDMI, Network Telephone Corporation ("NTC"), Talk America of Virginia, Inc. ("TAVA"), and The Other Phone Company, Inc. ("OPC"), which companies together serve a nationwide customer base. Talk America is based in New Hope, Pennsylvania and is authorized to provide local and long distance telecommunications on essentially a nationwide basis. LDMI is based in Southfield, Michigan and is authorized to

provide local and long distance telecommunications in Illinois, Michigan, and Ohio and long distance telecommunications services on essentially a nationwide basis. Talk America, LDMI, OPC, TAVA and NTC hold domestic and international Section 214 authorizations from the FCC. Talk America currently has 300,000 residential customers and 50,000 business customers.

In Missouri, Talk America is authorized to provide local exchange and interexchange telecommunications services pursuant to Case Nos. TZ-97-485 and TA-92-308. LDMI is authorized to provide interexchange telecommunications services pursuant to Case No. TA-96-208 and to provide local exchange telecommunications services pursuant to Case No. TA-2001-545. Copies of Talk America's and LDMI's certificates of good standing are attached hereto as Exhibit A. Further information regarding TA Holdings' operating entities and the services they provide has previously been submitted to the Commission, is therefore a matter of public record, and is incorporated herein by reference.

## **II. CONTACT INFORMATION**

For the purposes of this Application, questions or any correspondence, orders, or other materials should be directed to the following contacts for the Applicants:

Mark W. Comley  
NEWMAN, COMELY & RUTH P.C.  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
(573) 634-2266 (Tel)  
(573) 636-3306 (Fax)  
comleym@ncrpc.com

and

Catherine Wang  
Ulises R. Pin  
Danielle C. Burt  
Bingham McCutchen LLP  
3000 K Street, NW, Suite 300

Washington, DC 20007-5116  
Tel: (202) 373-6000  
Fax: (202) 424-7647  
Email: catherine.wang@bingham.com  
u.pin@bingham.com  
danielle.burt@bingham.com

With copies to:

Richard U. Stubbs, Esq.  
General Counsel  
Cavalier Telephone Mid-Atlantic, LLC  
965 Thomas Drive  
Warminster, PA 18974  
Tel: (267) 803-4002  
Fax: (267) 803-4147  
Email: rstubbs@cavtel.com

Stephen T. Perkins, Esq.  
General Counsel  
Cavalier Telephone, LLC  
1319 Ingleside Road  
Norfolk, VA 23502  
Tel: (757) 248-4160  
Fax: (757) 248-4040

and

Francie McComb, Esq.  
Vice President Regulatory Affairs  
Talk America Inc.  
6805 Route 202  
New Hope PA 18938  
Tel: (215) 862-1517  
Fax: (215) 862-1085  
Email: Francie@talk.com

### **III. DESCRIPTION OF THE PROPOSED TRANSACTION**

The proposed Transaction will be accomplished by:

(1) CTC's direct subsidiary Holdings borrowing from a syndication of lenders (the "Lenders") sufficient capital to effect the acquisition and related buybacks of preferred stock,

common stock, and options, and to provide for anticipated post-Transaction working capital and other operations needs of and between the subject operating companies, as described *infra*,

(2) CTC (indirectly through Holdings), acquiring all of the issued and outstanding shares of TA Holdings, and

(3) TA Holdings being merged into Acquisition with TA Holdings surviving.

As a result of these steps, Holdings, and by extension CTC, will indirectly control Talk America and LDMI.<sup>5</sup> For the Commission's convenience, pre- and post-Transaction illustrative charts are provided as Exhibit B.

Applicants therefore request authority for the Transaction, including the indirect transfer of control of Talk America and LDMI. Immediately following the consummation of the proposed Transaction, Talk America and LDMI will continue to offer service to existing customers with no change in their rates or terms and conditions of service. Therefore, the transfer of control of Talk America and LDMI will be seamless and transparent to consumers in the State of Missouri. Further, to effect the acquisition, Holdings seeks approval to borrow from the Lenders up to approximately \$510 million,<sup>6</sup> consisting of (a) a senior secured term loan facility of up to approximately \$415 million with a six-year maturity date, (b) a senior secured revolving credit facility of up to \$20 million, and (c) a second lien term loan facility of up to \$75 million. Holdings will use the funds to finance the acquisition of TA Holdings and its subsidiaries, the related repurchase of CTC preferred stock (approximately \$72 million) and common stock and employee stock options (approximately \$5 million), as well as to provide for

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<sup>5</sup> Due to the voluminous and confidential nature of the transaction document, a copy has not been attached hereto. Should the Commission require a copy of this document, the Applicants will provide it under seal pursuant to a Protection Order issued by the Commission.

<sup>6</sup> Further, conditioned upon Holdings' maintaining compliance under its subject loan agreement, the Lenders have provided Holdings the right to solicit commitments for an additional pre-approved increase of up to \$100 million under the subject senior secured credit facilities' existing terms and conditions.

working capital and other general corporate purposes. In addition, upon closing the Transaction, Talk America and LDMI, will become co-guarantors in Holdings' same indebtedness and will pledge their assets as security. Accordingly, Applicants request approval, to the extent necessary, to pledge their assets and enter into the proposed financing arrangements.

#### **IV. PUBLIC INTEREST STATEMENT**

Applicants submit that the Transaction will serve the public interest. Applicants expect that the proposed acquisition will enable the CTC and TA Holdings' operating subsidiaries to strengthen their competitive positions in Missouri to the benefit of Missouri consumers and the State's telecommunications marketplace. Further, the Transaction will be conducted in a manner that will be transparent to customers of Talk America and LDMI. The transfer of control of Talk America and LDMI will not result in a change of carrier for customers or any transfer of authorizations. Following consummation of the proposed Transaction, Talk America and LDMI will continue to provide high-quality communications services to their customers without interruption and without immediate change in rates, terms or conditions.

Moreover, the proposed Transaction will serve the public interest by enhancing the current abilities of the CTC and TA Holdings' operating companies to provide their customers the prospect of a more comprehensive suite of services. The Transaction will bring together two successful carrier organizations that have proven themselves in a highly competitive marketplace. These organizations have growing customer bases with little overlap, a nationwide reach, and, in their sixteen core states, highly complementary business models of providing facilities-based voice and data services over unbundled network element loops ("UNE-L"). This Transaction will help create a stronger, more enduring competitor than either carrier could achieve on its own in a similar time frame. By bringing together each organization's respective



strengths, product suites, and geographic footprints, the combined organization will realize substantial synergies and cost-savings. This Transaction will strengthen their ability to enhance current service offerings, as well as to bring to a broader customer base a more advanced suite of services (e.g., in certain markets, IPTV). Together these operating companies will have the expertise, developed across the service areas of three incumbent local exchange companies ("ILECs"), to identify and create significant cross-selling opportunities to deliver long-term value to their customers.

The public interest will also be served because Applicants will be able to gain greater access to capital markets and consequently become better positioned to pursue a profitable growth strategy. The CTC and TA Holdings' operating companies will not themselves take on debt, but rather will simply provide additional security to Holdings' loan. Moreover, the companies' collective positive cash flows substantially exceed their operating expenses and debt service. Approval of the proposed Transaction therefore will better position Applicants to reduce costs, to increase revenue, and to match their business goals with their financing needs in order to achieve significant and deliberate growth.

Applicants emphasize that the proposed indirect transfer of control will be seamless and completely transparent to the customers of Talk America and LDML, and no party believes the Transaction will result in the discontinuance, reduction, loss, or impairment of service to customers. Accordingly, Applicants request that the Commission commence its examination of the proposed Transaction as soon as possible and complete its review no later than December 10, 2006.

**V. ADDITIONAL INFORMATION REQUIRED BY RULES**

Pursuant to the requirements of 4 CSR 240-2.060(K), Applicants state that they do not have any pending or unsatisfied final judgments or decisions against them in any state or federal agency or court which involve customer service or rates, which action, judgment or decision occurred within the last three (3) years.

Pursuant to the requirements of 4 CSR 240-2.060(L), Applicants state that, to the best of their knowledge, they have no annual report or assessment fees that are overdue. Pursuant to the requirements of 4 CSR 240-3.520(F), Applicants state that they do not anticipate that the proposed transaction will have any impact on tax revenues of any political subdivision in which structures, facilities or equipment of the Applicants are located.

## **VI. JURISDICTION OF COMMISSION OVER PROPOSED TRANSACTION**

Applicants file their application for approval under Section 392.300 out of an abundance of caution in case the Commission determines that the statute applied to their transaction. Whether the Commission ultimately determines that it does have jurisdiction over this transaction is not Applicants' primary concern. Instead, Applicants are primarily concerned that such a decision is made promptly and if approval is necessary, that it be granted in an expedited fashion so that Applicants can complete their transaction in a timely fashion. As described below, Applicants believe that the Commission does not have jurisdiction over the proposed transaction, which conclusion is consistent with prior Commission decisions.

### **A. Applicability of Section 392.300**

Under Section 392.300.1, the Commission must approve the sale of "any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public" or any, direct or indirect, merger of such line or system, or franchise, or any part thereof, with any corporation, person or public utility.

This section would appear to apply to the transfer of assets of a telecommunications company or the merger of a telecommunications company with another entity.

On its face, however, Section 392.300.1 does not appear to apply to the mere transfer of an ownership interest in a company. This section would clearly apply to the transfer of assets of a telecommunications company or the merger of a telecommunications company with another entity. An acquisition of the ownership interest in a telecommunications company, therefore, falls outside the scope of Section 392.300.1.<sup>7</sup>

The Commission has, under Section 392.300.2, jurisdiction over transactions similar to Applicants' proposed transaction. Specifically, Section 392.300.2 requires approval for the stock corporation to buy more than 10% of the capital stock issued by a telecommunications company organized or existing under or by virtue of the laws of Missouri. Neither Talk America nor LDMI is organized or existing under or by virtue of the laws of Missouri, but under the laws of Delaware. Section 392.300.2, therefore, does not apply to Talk America or LDMI.

**B. The Commission has Dismissed for Lack of Jurisdiction Applications for Approval of Similar Transactions**

The Commission has dismissed for lack of jurisdiction a number of applications for approval of transaction similar to the proposed transaction of Applicants. Recently, the Commission determined that Section 392.330.1 did not apply to a transaction in which the membership interests in KMC Data LLC ("KMC Data") were acquired by Hypercube, LLC ("Hypercube").<sup>8</sup> The Commission concluded that since KMC Data would retain all of its assets and would simply be owned by a different holding company, KMC Data was not disposing of its

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<sup>7</sup> As described above, the proposed transaction involves the acquisition by CTC of Talk America Holdings, the parent of Talk America and LDMI.

<sup>8</sup> *Joint Application of Hypercube, LLC and KMC Data LLC for Grant of the Authority to Complete a Service of Transactions Resulting in the Transfer of Control of an Authorized Carrier*, Case No. TM-2006-0289, Order Dismissing Joint Application (Feb. 23, 2006) (hereinafter *KMC Data/Hypercube*).

franchise, facilities, or system. In *KMC Data/Hypercube*, the Commission also recognized that Section 392.300.2 did not give the Commission jurisdiction over the transaction because Hypercube was not organized under Missouri law. Since the transaction proposed by Applicants has these same elements, Commission precedent would dictate that the Commission dismiss this Application for lack of jurisdiction.

This case cited by Applicants conclude that transfers of control not affecting the operations of the certificated entity are outside the jurisdiction of the Commission under Section 392.300. The Commission, therefore, should similarly dismiss Applicants' Application for lack of jurisdiction.

## **VII. CONCLUSION**

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application for the above-described Transaction. Applicants respectfully request expedited treatment to permit Applicants to complete the Transaction no later than December 10, 2006.

Respectfully submitted,

By: 

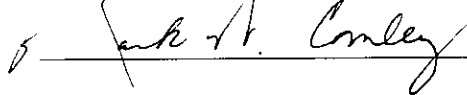
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Fax: (202) 424-7647  
Email: catherine.wang@bingham.com  
u.pin@bingham.com  
danielle.burt@bingham.com

Dated: October 2, 2006

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 2<sup>nd</sup> day of October, 2006, to General Counsel's Office at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov); and Office of Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov).

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## **LIST OF EXHIBITS**

Exhibit A	Talk America and LDMI Certificates of Corporate Good Standing
Exhibit B	Pre- and Post-Transaction Illustrative Chart
Verifications	

**EXHIBIT A**

**Talk America and LDMI Certificates of Corporate Good Standing**



Robin Carnahan  
Secretary of State

CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING

ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records  
my office and in my care and custody reveal that

TALK AMERICA INC.

ing in Missouri the name

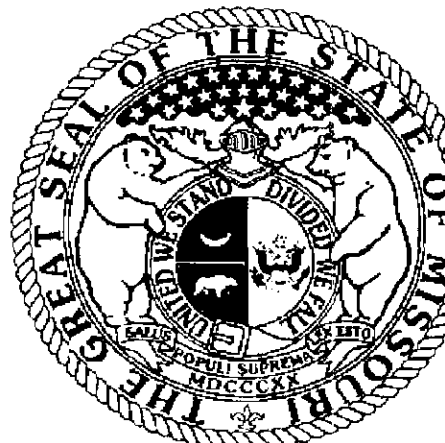
TALK AMERICA INC.  
F00366823

PENNSYLVANIA entity was created under the laws of this State on the 28th day of May,  
92, and is in good standing, having fully complied with all requirements of this office.

TESTIMONY WHEREOF, I have set my  
and and imprinted the GREAT SEAL of the  
ate of Missouri, on this, the 2nd day of  
ctober, 2006

*Robin Carnahan*

Secretary of State







Robin Carnahan  
Secretary of State

**CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING**

ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the record  
my office and in my care and custody reveal that

**LDMI TELECOMMUNICATIONS, INC.**

ing in Missouri the name

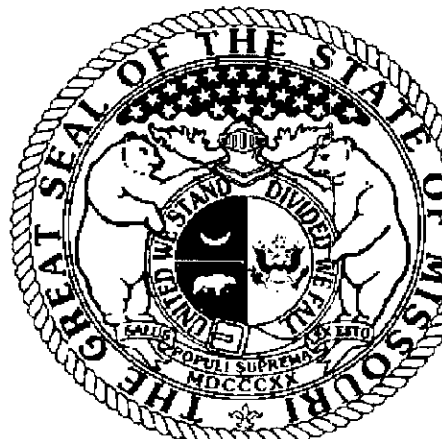
**LDMI TELECOMMUNICATIONS, INC.  
F00417151**

MICHIGAN entity was created under the laws of this State on the 5th day of October, 1995  
d is in good standing, having fully complied with all requirements of this office.

TESTIMONY WHEREOF, I have set my  
nd and imprinted the GREAT SEAL of the  
ate of Missouri, on this, the 2nd day of  
ctober, 2006

*Robin Carnahan*

Secretary of State



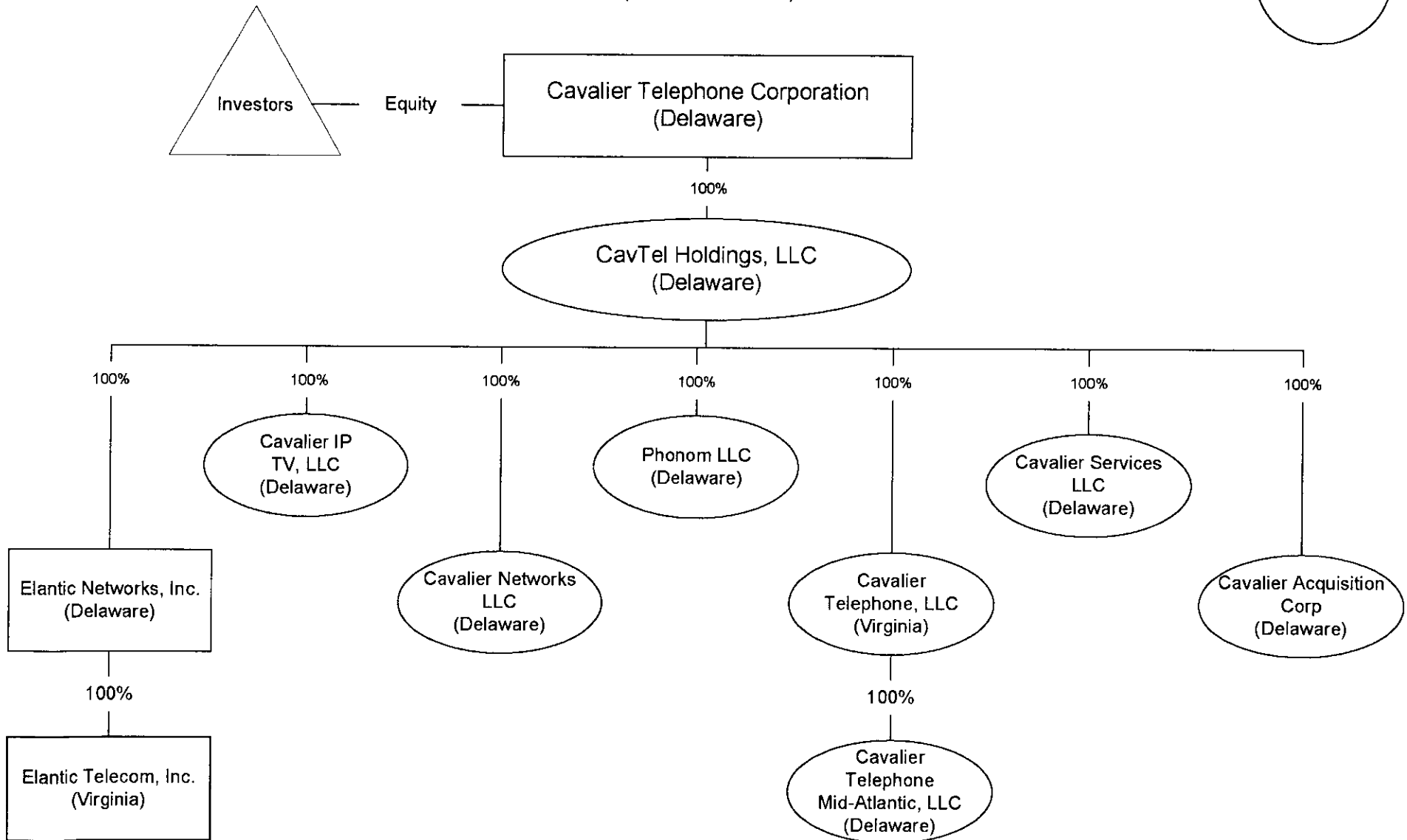
**EXHIBIT B**

**Pre- and Post-Transaction Illustrative Chart**

# Cavalier Telephone Corporation

## Corporate Structure (Pre Transaction)

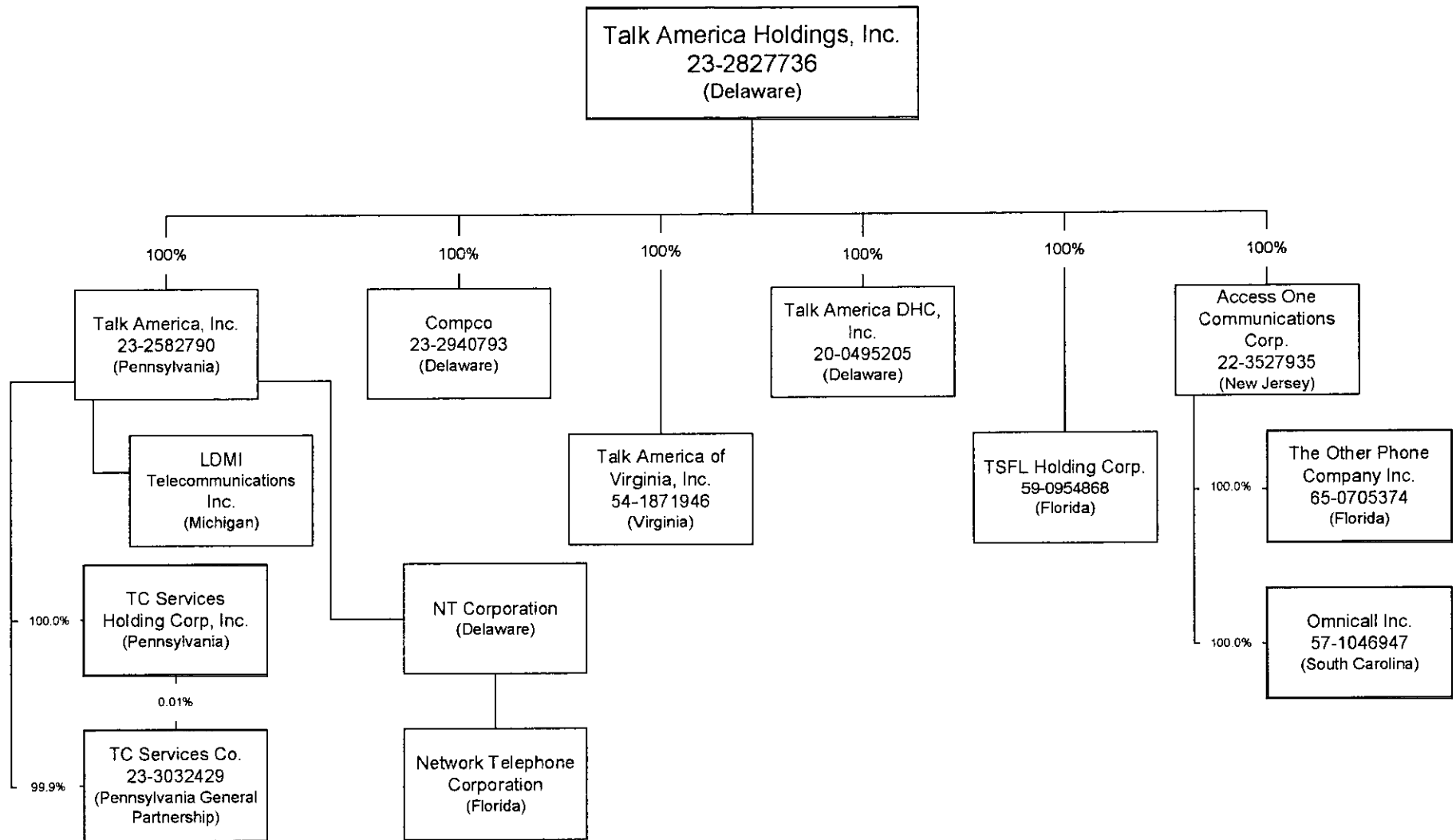
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# Talk America Corporation

## Corporate Structure (Pre Transaction)

2



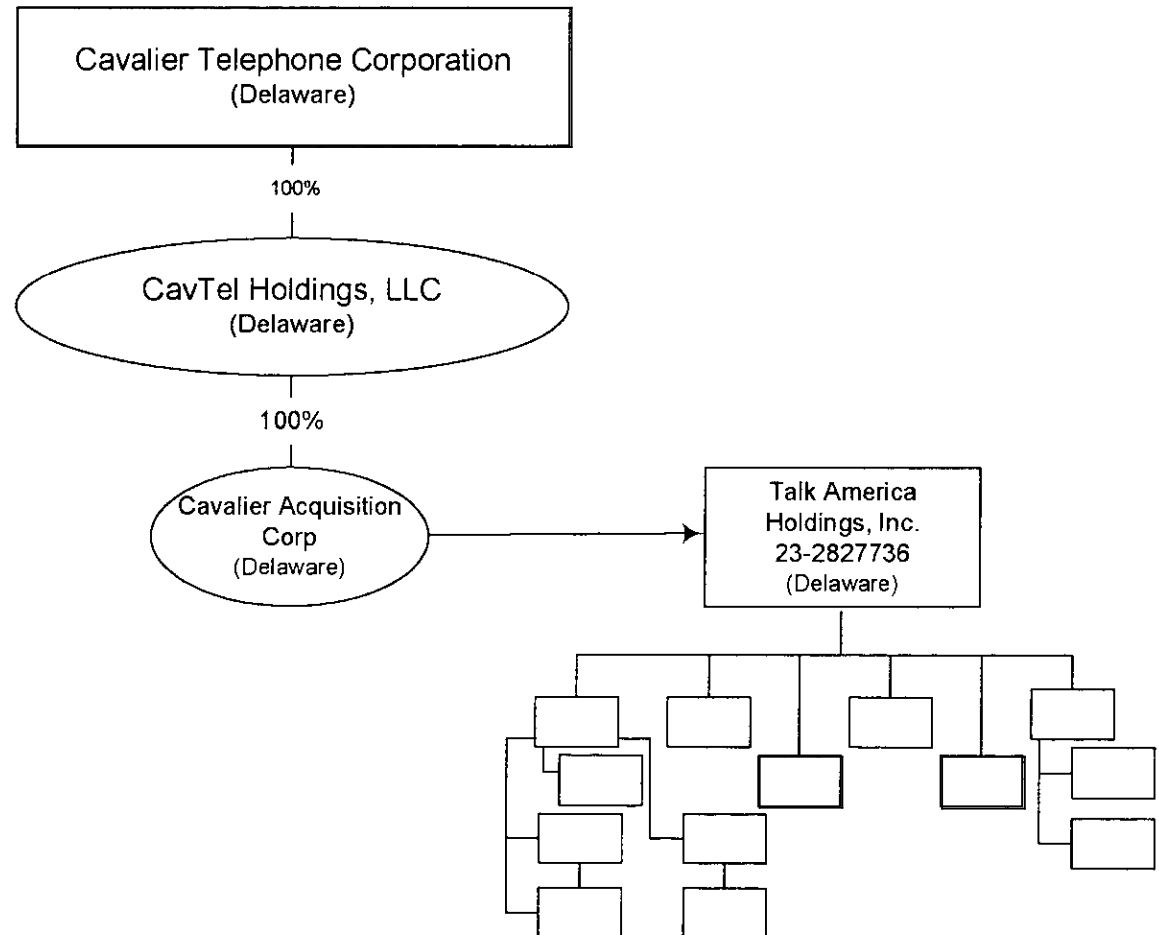
Talk America Holdings, Inc

and

Cavalier Acquisitions Corp

3

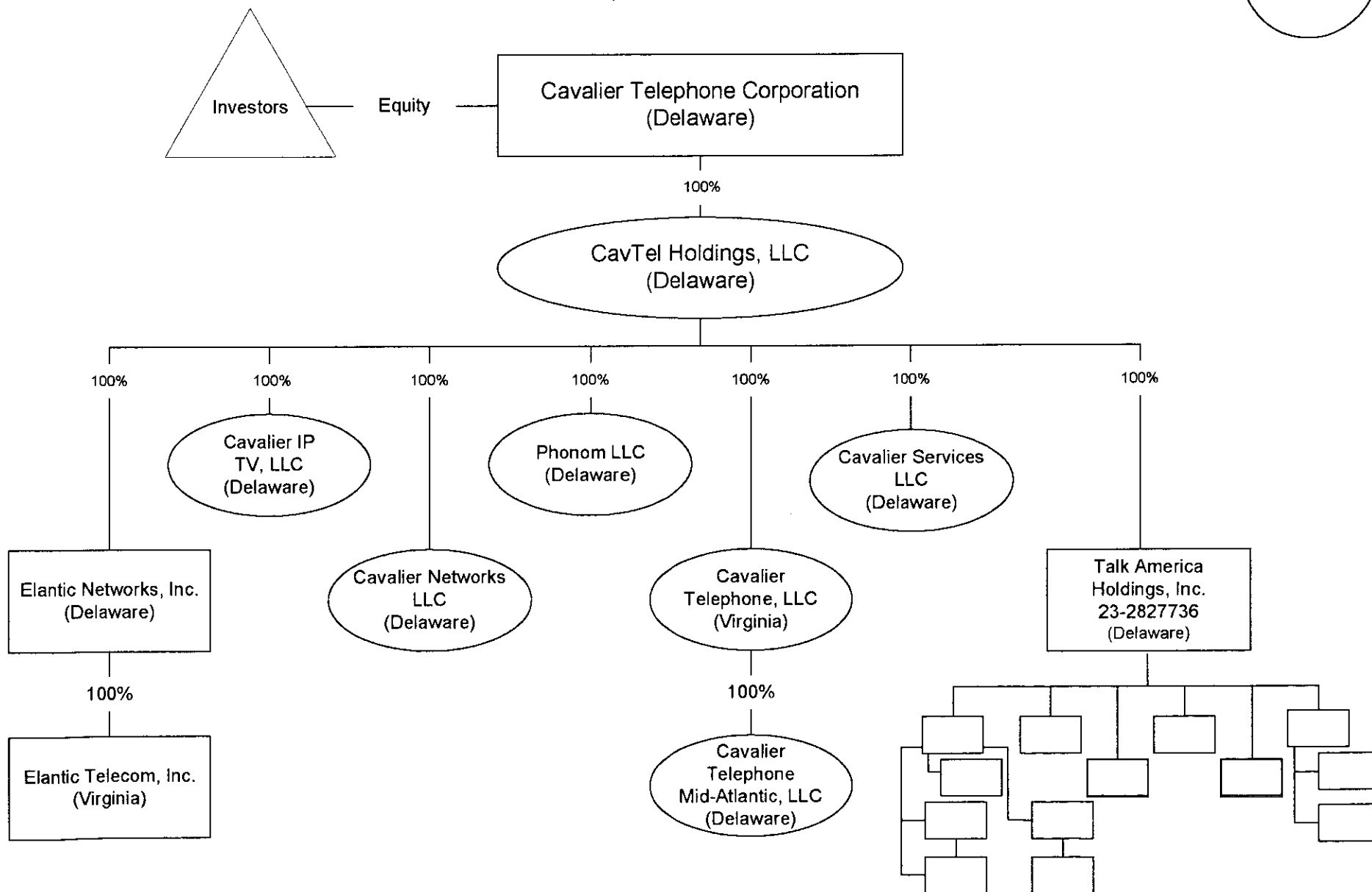
The Reverse Triangular Merger



Cavalier Telephone Corporation

Corporate Structure  
(Post Transaction)

4a

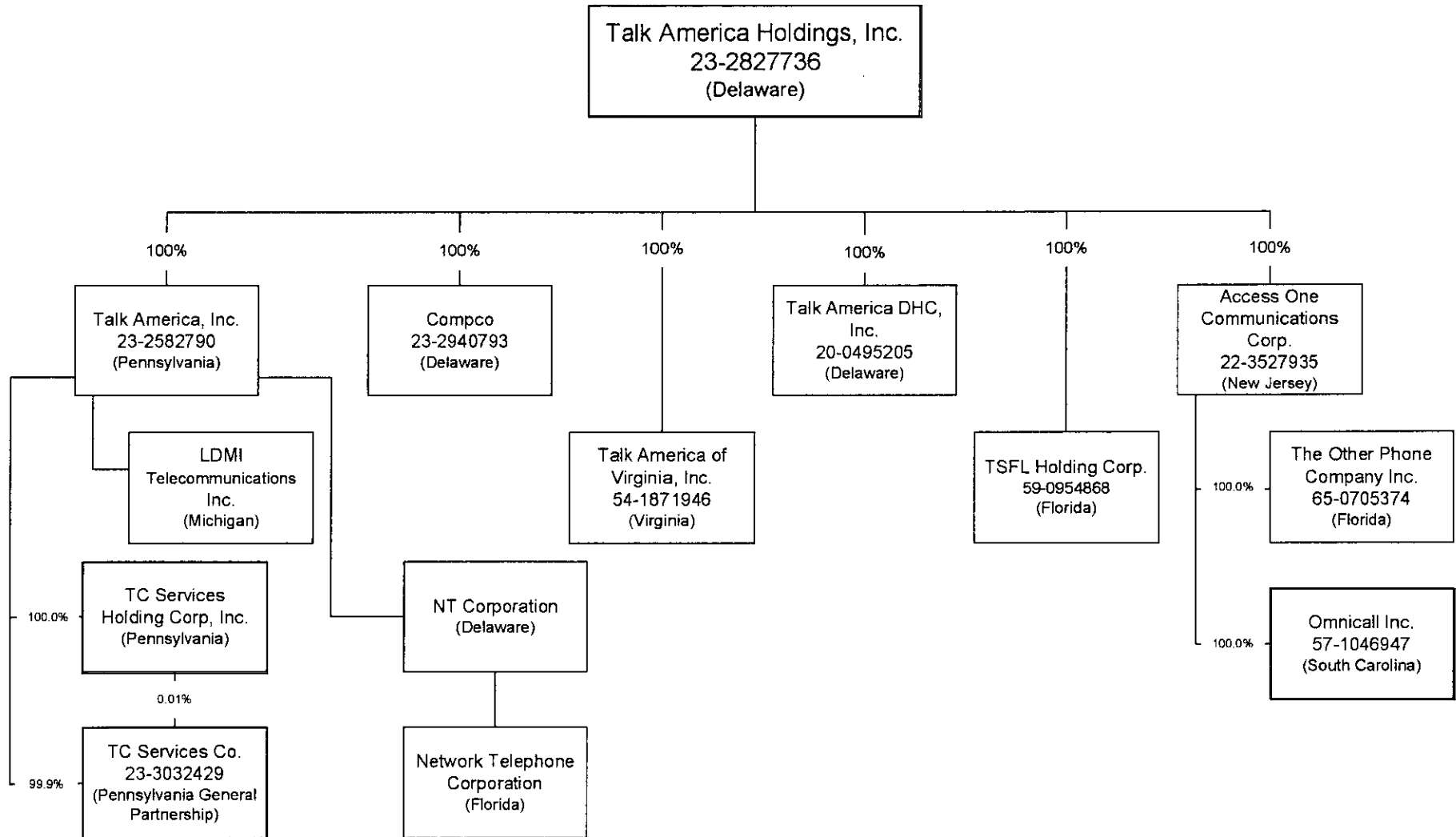


See Page 4b for the expanded view  
of Talk America Holdings, Inc.

Talk America Holdings, Inc.

(Post Transaction)

4b



## VERIFICATIONS



STATE OF PENNSYLVANIA

§

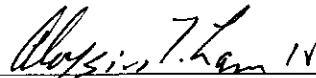
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COUNTY OF BUCKS

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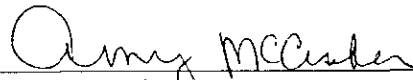
### VERIFICATION

I, Aloysius T. Lawn, IV, state that I am the Executive Vice President, General Counsel and Secretary of Talk America Holdings, Inc., the parent of Talk America, Inc.; that I am authorized to make this Verification on behalf of the Talk America Holdings, Inc. and its operating entities; that the foregoing Application was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



Aloysius T. Lawn, IV  
Executive Vice President, General Counsel and  
Secretary  
Talk America Holdings, Inc.

SWORN TO AND SUBSCRIBED before me on the 29<sup>th</sup> day of Sept., 2006.



Notary Public

My commission expires:

5/20/08

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Amy McCusker, Notary Public

New Hope Boro, Bucks County

My Commission Expires May 20, 2008

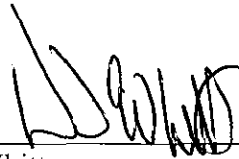
Member, Pennsylvania Association Of Notaries

STATE OF Virginia  
CITY OF Richmond

§  
§  
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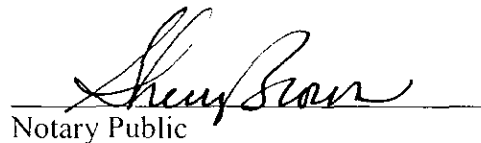
### VERIFICATION

I, David Whitt, state that I am CFO of Cavalier Telephone Corporation; that I am authorized to make this Verification on behalf of the Cavalier Telephone Corporation and its operating entities; that the foregoing Application was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



\_\_\_\_\_  
David Whitt  
CFO  
Cavalier Telephone Corporation

SWORN TO AND SUBSCRIBED before me on the 28 day of September, 2006.

  
\_\_\_\_\_  
Notary Public

My commission expires: 2-29-08