

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 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) September 30, 2021

**Digital Turbine, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of Incorporation)

**001-35958**  
(Commission File Number)

**22-2267658**  
(IRS Employer Identification No.)

**110 San Antonio Street, Suite 160, Austin, TX**  
(Address of Principal Executive Offices)

**78701**  
(Zip Code)

**(512) 387-7717**  
(Registrant's Telephone Number, Including Area Code)

(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))

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

**Title of each class**  
Common Stock

**Trading symbol(s)**  
APPS

**Name of each exchange on which registered**  
NASDAQ

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). 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.

**Item 1.01 Entry into a Material Definitive Agreement.**

On September 30, 2021, Digital Turbine, Inc., a Delaware corporation (the "Company"), Digital Turbine Media, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company ("DT Media"), and Digital Turbine Luxembourg S.à r.l., a subsidiary of the Company, entered into the Second Amendment Agreement (the "Amendment Agreement") to the previously-reported Sale and Purchase Agreement (as previously amended, the "Sale and Purchase Agreement") with Tendor Holding B.V., Advert Finance B.V., and Lars Windhorst (collectively, the "Seller") regarding the acquisition of Fyber N.V. ("Fyber"). Pursuant to the Amendment Agreement, the parties agreed to settle the remaining number of shares of Company common stock to be issued to Seller, which remainder will be 18,000 shares. As a result, the Company will issue a total of 5,775,299 shares of Company common stock to Seller in connection with the Company's acquisition of Fyber (5,757,299 shares of which have already been issued).

The foregoing description of the Amendment Agreement does not purport to be complete and is qualified in its entirety by reference to the Amendment Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits**

[10.1](#) [Second Amendment Agreement to the Sale and Purchase Agreement, dated effective September 23, 2021, by and among Digital Turbine, Inc., Digital Turbine Media, Inc., Digital Turbine Luxembourg S.à r.l., Tendor Holding B.V., Advert Finance B.V., and Lars Windhorst](#)

104 Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

**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 hereunto duly authorized.

Dated: October 4, 2021

Digital Turbine, Inc.

By: /s/ Barrett Garrison

Barrett Garrison

Executive Vice President, Chief Financial Officer

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**PROJECT FIREFLY**  
**SALE AND PURCHASE AGREEMENT**

**2<sup>nd</sup> Amendment Agreement**

**Dated September 23, 2021**

Project Firefly  
Sale and Purchase Agreement  
2<sup>nd</sup> Amendment Agreement  
Execution Copy

**2<sup>nd</sup> Amendment Agreement ("Amendment") to the Sale and Purchase Agreement dated March 22, 2021 and 1<sup>st</sup> Amendment Agreement dated May 25, 2021**

by and between

- (1) **Tennor Holding B.V.**, a private limited liability company under Dutch law (*besloten vennootschap met beperkte aansprakelijkheid*), having its registered seat in Amsterdam, the Netherlands, its office address at Schiphol Boulevard 127, G4.08, 1118 BG Schiphol, The Netherlands and registered with the Netherlands Chamber of Commerce Business Register under number 34355195 ("**Tennor**");
  - (2) **Advert Finance B.V.**, a private limited liability company under Dutch law (*besloten vennootschap met beperkte aansprakelijkheid*), having its registered seat in Amsterdam, the Netherlands, its office address at Schiphol Boulevard 127, G4.02, 1118 BG Schiphol, The Netherlands and registered with the Netherlands Chamber of Commerce Business Register under number 74507516 ("**Advert**"),
  - (3) **Mr. Lars Windhorst**, Gubelstr. 24, 6300 Zug, Switzerland ("**LW**"),
- (together the "**Sellers**" and individually a "**Seller**")
- and
- (4) **Digital Turbine Luxembourg S.à r.l.**, a private limited company under the laws of the Grand Duchy of Luxembourg (*Société à responsabilité limitée*), having its registered seat in Luxembourg, its office address at 121, avenue de la Faïencerie L - 1511 Luxembourg, Grand Duchy of Luxembourg and registered with the commercial register of Luxembourg under number B191240 ("**Purchaser**");
  - (5) **Digital Turbine, Inc.**, a corporation incorporated under the laws of the State of Delaware, having its principal executive office at 110 San Antonio Street, Suite 160, Austin, Texas, United States, and registered with the Secretary of State of the State of Delaware under number 4423588 ("**Purchaser's Parent**" or "**Guarantor**"),
  - (6) **Digital Turbine Media, Inc.**, a corporation incorporated under the laws of the State of Delaware, having its principal executive office at 406 Blackwell St., Durham, NC 27701, United States of America, and registered with the Secretary of State of the State of Delaware under number 333-21-4321-03 ("**DT Media**").

The Purchaser, the Guarantor and DT Media are collectively referred to herein as the "**Purchasers**."

The Sellers and the Purchasers are collectively referred to herein as the "**Parties**" and individually as a "**Party**".

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Sale and Purchase Agreement  
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**1. PREAMBLE:**

- 1.1 The Sellers and the Purchasers entered into a sale and purchase agreement dated March 22, 2021, ("**SPA**") for the acquisition of all shares in Fyber N.V. held by the Sellers, however, at least 95% of the shares in Fyber N.V., a public limited liability company (*naamloze vennootschap*) registered with the Netherlands Chamber of Commerce (*Kamer van Koophandel*) under number 54747805 and also registered with the commercial register (*Handelsregister*) kept at the local court (*Amtsgericht*) of Charlottenburg under HRB 166541 B ("**Company**").
- 1.2 On May 25, 2021, the Parties entered into a 1<sup>st</sup> Amendment Agreement ("**1<sup>st</sup> Amendment**") to document the Purchaser's designation of DT Media as the intended transferee of the Sellers' shares in the Company in accordance with Sec. 2.2.4 of the SPA. The Parties furthermore agreed in the 1<sup>st</sup> Amendment that the Closing Share Consideration shall in aggregate amount to 5,816,588 shares of Purchaser's Parent Common Stock, to be issued in tranches, and that the Sellers shall transfer 400,000,000 shares, representing approximately 72.44% of the Company's shares, to the Purchaser on March 25, 2021, and by June 1, 2021, all remaining shares in the Company held by the Sellers.

- 1.3 Following the execution of the 1<sup>st</sup> Amendment, the Sellers transferred 400,000,000 shares in the Company to DT Media on May 25, 2021. The remaining shares in the Company held by the Sellers were transferred to DT Media in several installments after June 1, 2021, as follows: (i) 33,553,108 shares on June 10, 2021; (ii) 63,000,000 shares on June 22, 2021; (iii) 12,000,000 shares on June 24, 2021; (iv) 12,000,000 shares on June 28, 2021; (v) 3,000,000 shares on June 30, 2021; (vi) 1,185,661 shares on July 14, 2021; and (vii) 1,067,228 shares on July 15, 2021. In total, DT Media acquired 525,805,997 shares in the Company from the Sellers, corresponding to approximately 95.22% of the Company's share capital and voting rights.
- 1.4 As of the date hereof, Purchaser's Parent has issued 5,757,299 shares of Purchaser's Parent Common Stock to the Sellers as Closing Shares Consideration. DT Media retained the remainder of the Closing Share Consideration of 59,289 Purchaser's Parent Common Stock, equalling a value of USD 4,077,239, to account for (i) the non-delivery of a certain amount of shares in the Company by the Sellers, (ii) the increase of DT Media's legal and banking fees due to such deficit and (iii) the incremental costs for a higher minimum price offered under the MTO (as defined below). The Parties have now agreed on a settlement of the outstanding Share Consideration.
- 1.5 Prior to entering into this 2<sup>nd</sup> Amendment, DT Media acquired additional shares in the Company by way of a mandatory takeover and delisting tender offer to the shareholders of the Company in accordance with the laws of the Federal Republic of Germany ("**MTO**"). On July 9, 2021, DT Media published the offer document for the MTO providing for a price per share in the Company of EUR 0.84. The MTO's acceptance period lapsed on August 6, 2021. The Company has also been delisted from the regulated market of the Frankfurt Stock Exchange as well as from the sub-segment of the regulated market with additional post-admission obligations (Prime Standard).

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Sale and Purchase Agreement  
2<sup>nd</sup> Amendment Agreement  
Execution Copy

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- 1.6 Following the completion of the MTO, DT Media intends to carry out a squeeze-out at the Company to effect the transfer of the shares in the Company held by remaining minority shareholders to DT Media ("**Squeeze-Out**").
- 1.7 Sec. 16.3 of the SPA provides for DT Media's obligation to file an automatic shelf registration statement on Form S-3 pursuant to Rule 462 under the Securities Act to provide for the resale of the Closing Share Consideration by the Sellers. Sec. 16.3.2 of the SPA provides for a delay mechanism to the extent such shelf registration would require DT Media or the Purchaser's Parent to make a Supplemental Disclosure or would require the inclusion in the Shelf Registration Statement of financial statements that are unavailable to the Purchaser for reasons beyond DT Media's or the Purchaser's Parent's control.
- 1.8 Any capitalized terms used but not defined in this Amendment shall have the same meaning as ascribed to them in the SPA unless otherwise expressly agreed herein.

Now, therefore, the Parties agree as follows:

## 2. SETTLEMENT OF SHARE CONSIDERATION

- 2.1 In order to settle disputes about the outstanding Closing Share Consideration, the Parties hereby agree that Purchaser's Parent shall instruct American Stock Transfer & Trust Company, LLC, as the transfer agent and registrar for the Purchaser's Parent Common Stock, to issue 18,000 of Purchaser's Parent Common Stock, in book-entry form, to the Sellers as the final instalment of the Closing Share Consideration, in deviation from Sec. 3.2(h) of the 1<sup>st</sup> Amendment. Following the issuance of such 18,000 of Purchaser's Parent Common Stock, the Purchasers' shall be released from any and all obligations in connection with the Closing Share Consideration.
- 2.2 The Parties hereby further agree that (i) the Sellers shall not be obligated to transfer any further shares in the Company to the Purchasers and (ii) any consequences with respect to the offer price under the MTO resulting from the Squeeze-Out shall economically be borne by the Purchasers.
- 2.3 The Parties furthermore hereby mutually waive any known or unknown claims which might exist based on any delays in the satisfaction of the obligations under the SPA (as amended by the 1<sup>st</sup> Amendment).

## 3. SHELF REGISTRATION STATEMENT

The Parties acknowledge that the Sellers have not yet provided certain information required for the filing of the Shelf Registration Statement and the Parties hereby agree that the Purchasers shall not be obligated to file the Shelf Registration Statement until the Sellers have provided all such required information to DT Media in a form reasonably satisfactory to DT Media; provided, that the obligation of the Purchasers to file the Shelf Registration Statement shall continue to be subject to the terms of Sec. 16.3.2 of the SPA.

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## 4. FINAL PROVISIONS

- 4.1 The provisions of the SPA shall remain unchanged unless explicitly amended by the 1<sup>st</sup> Amendment or this Amendment.
- 4.2 Each of the Parties shall bear its own costs in connection with this 2<sup>nd</sup> Amendment.
- 4.3 Secs. 17 (Confidentiality and Public Announcements), 18 (Notices), 20 (Governing Law and Jurisdiction) and 21 (Final Provisions) of the SPA shall apply to this Amendment accordingly.
- 4.4 This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

[signature pages to follow]

*[Signature Page Tennor Holding B.V. to 2<sup>nd</sup> Amendment]*

**Tennor Holding B.V.**

Date: September 23, 2021

/s/ Lars Windhorst

\_\_\_\_\_  
Name: Lars Windhorst  
Title: Director

/s/ Stefan Kindler

\_\_\_\_\_  
Name: Stefan Kindler  
Title: Director

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*[Signature Page Lars Windhorst to 2<sup>nd</sup> Amendment]*

**Lars Windhorst**

Date: September 23, 2021

/s/ Lars Windhorst

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*[Signature Page Advert Finance B.V. to 2<sup>nd</sup> Amendment]*

**Advert Finance B.V.**

Date: September 23, 2021

/s/ Advert Investment B.V.

\_\_\_\_\_  
Name: Advert Investment B.V.  
Title: solely authorised managing director

/s/ Stefan Kindler

\_\_\_\_\_  
Name: Stefan Kindler  
Title: solely authorised managing director

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*[Signature Page Digital Turbine Luxembourg S.à r.l. to 2<sup>nd</sup> Amendment]*

**Digital Turbine Luxembourg S.à r.l.**

Date: September 23, 2021

/s/ Bill Stone

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Name: Bill Stone

Title: Director

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*[Signature Page Digital Turbine, Inc. to 2<sup>nd</sup> Amendment]*

**Digital Turbine, Inc.**

Date: September 23, 2021

/s/ Bill Stone

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Name: Bill Stone

Title: Director

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*[Signature Page Digital Turbine Media, Inc. to 2<sup>nd</sup> Amendment]*

**Digital Turbine Media, Inc.**

Date: September 23, 2021

/s/ Bill Stone

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Name: Bill Stone

Title: Director

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