

COGENT COMMUNICATIONS GROUP INC  
Form DEF 14A  
March 01, 2010

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**SCHEDULE 14A INFORMATION**

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 §240.14a-11 OR §240.14a-12

**COGENT COMMUNICATIONS GROUP, INC.**

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(Name of Registrant as Specified In Its Charter)

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

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- No fee required.
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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

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1015 31st Street  
Washington, D.C. 20007  
(202) 295-4200

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS  
TO BE HELD ON April 15, 2010**

The Annual Meeting of Stockholders of Cogent Communications Group, Inc., a Delaware corporation (the "Company"), will be held on April 15, 2010, at 9:00 a.m., local time, at the Company's offices at 1015 31<sup>st</sup> Street, NW, Washington, D.C. 20007, for the following purposes:

1. To elect seven directors to hold office until the next annual meeting of stockholders or until their respective successors have been elected or appointed.
2. To vote on the ratification of the selection by the Audit Committee of Ernst & Young LLP as the independent registered public accountant for the Company for the fiscal year ending December 31, 2010.
3. To vote on an amendment to the 2004 Incentive Award Plan to increase the authorized number of shares of common stock in the plan by 1,300,000.
4. To transact such other business as may properly come before the Annual Meeting and any adjournment or postponement thereof.

The foregoing matters are described in more detail in the enclosed Proxy Statement.

The Board of Directors has fixed March 1, 2010 as the record date for determining stockholders entitled to vote at the Annual Meeting of Stockholders.

The Company's Proxy Statement is attached hereto. Financial and other information about the Company is contained in the enclosed 2009 Annual Report to Stockholders for the fiscal year ended December 31, 2009.

**You are cordially invited to attend the meeting in person. Your participation in these matters is important, regardless of the number of shares you own. Whether or not you expect to attend in person, we urge you to complete, sign, date and return the enclosed proxy card as promptly as possible in the enclosed envelope. If you choose to attend the meeting you may then vote in person if you so desire, even though you may have executed and returned the proxy. Any stockholder who executes such a proxy may revoke it at any time before it is exercised. A proxy may be revoked at any time before it is exercised by delivering written notice of revocation to the Company, Attention: Ried Zulager; by delivering a duly executed proxy bearing a later date to the Company; or by attending the Annual Meeting and voting in person.**

By Order of the Board of Directors,

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Ried Zulager, Secretary

Washington, D.C.  
March 1, 2010

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**COGENT COMMUNICATIONS GROUP, INC.**

**Important Notice Regarding the Availability of Proxy Materials for the  
Stockholder Meeting to Be Held at 9:00 a.m., April 15, 2010**

The proxy statement and annual report to stockholders (Form 10-K) are available at: <http://www.cogentco.com/Reports>.

The materials available at the website are the proxy statement and annual report to shareholders (Form 10-K).

The annual shareholder meeting will be held at 9:00 a.m. on April 15, 2010 at Cogent's offices at 1015 31<sup>st</sup> Street, NW, Washington, D.C. 20007. The matters to be covered are noted below:

1. Election of directors;
2. Ratification of appointment of Ernst & Young LLP as independent registered public accountants for the fiscal year ending December 31, 2010;
3. Amendment to the 2004 Incentive Award Plan to increase the authorized number of shares of common stock in the plan by 1,300,000; and
4. Other matters as may properly come before the meeting.

The Board of Directors of Cogent recommends voting FOR Proposal 1 Election of Directors, FOR Proposal 2 Ratification of Appointment of Ernst & Young LLP as independent registered public accountant for the fiscal year ending December 31, 2010, and FOR Proposal 3 Amendment to the 2004 Incentive Award Plan to increase the authorized number of shares in the plan by 1,300,000.

You are cordially invited to attend the meeting in person. Your participation in these matters is important, regardless of the number of shares you own. Whether or not you expect to attend in person, we urge you to complete, sign, date and return the enclosed proxy card as promptly as possible in the enclosed envelope. If you choose to attend the meeting you may then vote in person if you so desire, even though you may have executed and returned the proxy. Any stockholder who executes such a proxy may revoke it at any time before it is exercised. A proxy may be revoked at any time before it is exercised by delivering written notice of revocation to the Company, Attention: Ried Zulager; by delivering a duly executed proxy bearing a later date to the Company; or by attending the Annual Meeting and voting in person.

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1015 31st Street  
Washington, D.C. 20007  
(202) 295-4200

### **PROXY STATEMENT**

The Board of Directors of Cogent Communications Group, Inc. (the "Company"), a Delaware corporation, is soliciting your proxy on the proxy card enclosed with this Proxy Statement. Your proxy will be voted at the Annual Meeting of Stockholders (the "Annual Meeting") to be held on April 15, 2010, at 9:00 a.m., local time, at the Company's offices at 1015 31<sup>st</sup> Street, NW, Washington, D.C. 20007, and any adjournment or postponement thereof. This Proxy Statement, the accompanying proxy card and the Company's 2009 Annual Report to Stockholders are first being mailed to stockholders on or about March 3, 2010.

### **VOTING SECURITIES**

#### **Voting Rights and Outstanding Shares**

Only stockholders of record on the books of the Company as of 5:00 p.m., March 1, 2010 (the "Record Date"), will be entitled to vote at the Annual Meeting. At the close of business on the Record Date, the outstanding voting securities of the Company consisted of 44,781,543 shares of common stock, par value \$0.001 per share.

Holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders.

Votes cast by proxy or in person at the Annual Meeting will be tabulated by the Inspector of Elections with the assistance of the Company's transfer agent. The Inspector will also determine whether or not a quorum is present. Except in very limited circumstances, the affirmative vote of a majority of the shares having voting power present in person or represented by proxy at a duly held meeting at which a quorum is present is required under the Company's Bylaws for approval of proposals presented to stockholders. In general, our Bylaws also provide that a quorum consists of a majority of the shares issued and outstanding and entitled to vote, the holders of which are present in person or represented by proxy. The Inspector will treat abstentions as shares that are present and entitled to vote for purposes of determining the presence of a quorum and therefore, abstentions will have the effect of a negative vote for purposes of determining the approval of any matter submitted to the stockholders for a vote.

#### **Proxies**

The shares represented by the proxies received, properly dated and executed and not revoked will be voted at the Annual Meeting in accordance with the instructions of the stockholders. A proxy may be revoked at any time before it is exercised by:

delivering written notice of revocation to the Company, Attention: Ried Zulager;

delivering a duly executed proxy bearing a later date to the Company; or

attending the Annual Meeting and voting in person.

Any proxy which is returned using the form of proxy enclosed and which is not marked as to a particular item will be voted "FOR" the election of directors, "FOR" the ratification of the selection by



the Audit Committee of Ernst & Young LLP as independent registered public accountants, and "FOR" the approval of the increase in the number of shares in the incentive plan, and as the proxy holders deem advisable on other matters that may come before the meeting, as the case may be, with respect to the item not marked. If a broker indicates on the enclosed proxy or its substitute that it does not have discretionary authority as to certain shares to vote on a particular matter, those shares will not be considered as present with respect to that matter. The Company believes that the tabulation procedures to be followed by the Inspector are consistent with the general statutory requirements in Delaware concerning voting of shares and determination of a quorum.

The cost of soliciting proxies will be borne by the Company. In addition, the Company may reimburse brokerage firms and other persons representing beneficial owners of shares for their expenses in forwarding solicitation material to such beneficial owners. Proxies may also be solicited by certain of the Company's directors, officers and regular employees, without additional compensation, personally or by telephone or email.



**PROPOSAL NO. 1**  
**ELECTION OF DIRECTORS**

Seven directors are to be elected at the Annual Meeting to serve until their respective successors are elected and qualified. Nominees for election to the Board of Directors shall be approved by a majority of the votes cast by holders of our common stock present in person or by proxy at the Annual Meeting, each share being entitled to one vote.

In the event any nominee is unable or unwilling to serve as a nominee, the proxies may be voted for the balance of those nominees named and for any substitute nominee designated by the present Board or the proxy holders to fill such vacancy, or for the balance of those nominees named without nomination of a substitute, or the Board may be reduced in accordance with the Bylaws of the Company. The Board has no reason to believe that any of the persons named will be unable or unwilling to serve as a nominee or as a director if elected.

Set forth below is certain information concerning the seven directors of the Company nominated to be elected at the Annual Meeting:

*Dave Schaeffer*, age 53, founded our Company in August 1999 and is our Chairman of the Board of Directors, Chief Executive Officer and President. Prior to founding the Company, Mr. Schaeffer was the founder of Pathnet, Inc., a broadband telecommunications provider, where he served as Chief Executive Officer from 1995 until 1997 and as Chairman from 1997 until 1999. Mr. Schaeffer has been a director since 1999. Mr. Schaeffer serves as both Chairman and CEO because he is the founder of the company and has successfully led the Company and the board since the Company was founded. For this reason he has been nominated to continue serving on the board.

*Steven D. Brooks*, age 58, has served on our Board of Directors since October 2003. Mr. Brooks is a private investor. He was Managing Partner of BCP Capital Management from 1999 to 2009. From 1997 until 1999, Mr. Brooks headed the technology industry mergers and acquisition practice at Donaldson, Lufkin & Jenrette. Previously, Mr. Brooks held a variety of positions in the investment banking and private equity fields, including: Head of Global Technology Banking at Union Bank of Switzerland, Managing Partner of Corporate Finance at Robertson Stephens, founder and Managing Partner of West Coast technology investment banking at Alex Brown & Sons, and Principal at Rainwater, Inc., a private equity firm in Fort Worth, Texas. Mr. Brooks has been nominated to continue serving on the board because of his extensive experience with firms such as Cogent and with public market activities of such companies. Having been involved with the Company since its early days he brings extensive historical perspective to the Board.

*Erel N. Margalit*, age 49, has served on our Board of Directors since 2000. Mr. Margalit has been Managing Partner of Jerusalem Venture Partners since August 1997. He was a general partner of Jerusalem Pacific Ventures from December 1993 to August 1997. From 1990 to 1993, Mr. Margalit was Director of Business Development of the City of Jerusalem. Mr. Margalit serves on the board of directors (which also serves as the compensation committee in each case) of Sepaton, Inc., Animation Lab Ltd., Cyber-Ark Software, Inc., Double Fusion Inc., Magink Display Technologies Inc., CyOptics, Inc., JVP Media Studio, L.P., Mega Learning Ltd., PopTok Ltd., Qlik Technologies, Inc., and Siano, Inc. All of these companies are privately held. Mr. Margalit, in his capacity as director of a company in Israel, is the subject of a proceeding in which the tax authorities have alleged that the company (which is unrelated to us) failed to pay withholding taxes (which triggers director's liability under the income tax law in Israel). Mr. Margalit was acquitted of all liability on July 2008. The verdict is under an appeal by the government. The proceedings are classified as criminal under the income tax law of Israel. Mr. Margalit has been nominated to continue serving on the board because of his extensive knowledge of the technology marketplace. A Jerusalem Venture Partners fund managed by him was a founding investor in Cogent. Mr. Margalit continues to play an active role in various technology ventures both in and outside the U.S.

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*Timothy Weingarten*, age 34, has served on our Board of Directors since October 2003. Mr. Weingarten is the CEO of Visage Mobile. He is also a consultant to and former general partner of Worldview Technology Partners. From 1996 to 2000 was a member of the telecom equipment research group at Robertson Stephens and Company. Mr. Weingarten is also a member of the board of directors of Visage Mobile, Zoove, Inc., and Ooma, Inc. He serves on the compensation committee of each of those companies and on the audit committee of Ooma and Visage. Mr. Weingarten has been nominated to continue serving on the board because of his extensive knowledge of the U.S. venture capital backed companies making use of the Internet. The board values this insight since Cogent's future growth depends to a great extent on the uses made of the Internet.

*Richard T. Liebhaber*, age 74, has served on our Board of Directors since March 2006. Mr. Liebhaber was with IBM from 1954 to 1985, where he held a variety of positions. Subsequently, he served as executive vice president and member of the management committee at MCI Communications, and from 1992 to 1995, served on the board of directors of MCI. From 1995 to 2001, Mr. Liebhaber served as managing director at Veronis, Suhler & Associates, a New York media merchant banking firm. He also serves on the board of JDS Uniphase, where he serves on the development and governance committees. Mr. Liebhaber has been nominated to continue serving on the board because of his extensive operational experience with telecommunications companies.

*D. Blake Bath*, age 47, has served on our Board of Directors since November 2006. He is the CEO of Bay Bridge Capital Management, LLC, an investment firm in Bethesda, MD. From 1996 until 2006, Mr. Bath was Managing Director at Lehman Brothers and, as a senior equity research analyst for Lehman Brothers, was Lehman's lead analyst covering wireline and wireless telecommunications services. Prior to joining Lehman Brothers he was the primary telecommunications analyst at Sanford C. Bernstein from 1992 to 1996. From 1989 to 1992 he was an analyst in the Strategic Planning and Corporate Finance organizations at MCI Communications. Mr. Bath has been nominated to continue serving on the board because of his wide experience with the telecommunications industry which allows him to contribute a broad perspective to discussions about the Company's future activities and its place in the current competitive landscape.

*Marc Montagner*, age 48, has been nominated to join the board. He is currently Executive Vice President of Strategy, Development and Distribution at SkyTerra. Prior to joining SkyTerra in February of 2009, Mr. Montagner was Managing Director and Co-Head of the Global Telecom, Media and Technology Merger and Acquisition Group at Banc of America Securities. Until August of 2006, he was Senior Vice President, Corporate Development and M&A with the Sprint Nextel Corporation. Prior this, Mr. Montagner had the same responsibilities with Nextel Communications. Prior to 2002, Mr. Montagner was a Managing Director in the Media and Telecom Group at Morgan Stanley. Prior to joining Morgan Stanley, Mr. Montagner worked for France Télécom in New York where he was Head of Corporate Development for North America. He has been nominated to the board due to his extensive experience in the telecommunications industry, specifically with operational, financial and strategic matters.

Unless marked otherwise, proxies received will be voted "FOR" the election of each of the nominees named above.

### **Recommendation of the Board of Directors:**

The Board recommends a vote "FOR" the election of all nominees named above.

**PROPOSAL NO. 2**

**Ratification of Appointment of Ernst & Young LLP as Independent Registered Public Accountants**

The Audit Committee of the Board has appointed Ernst & Young LLP as the Company's independent registered public accountants for the fiscal year ending December 31, 2010. Services provided to the Company and its subsidiaries by Ernst & Young LLP in fiscal years 2008 and 2009 are described under "Relationship with Independent Registered Public Accountants Fees and Services of Ernst & Young LLP," below.

We are asking our stockholders to ratify the selection of Ernst & Young LLP as our independent registered public accountants. Although ratification is not required by our Bylaws or otherwise, the Board is submitting the selection of Ernst & Young LLP to our stockholders for ratification as a matter of good corporate practice.

Representatives of Ernst & Young LLP will be available by telephone at the annual meeting to respond to appropriate questions and will have the opportunity to make a statement if they desire to do so.

The affirmative vote of the holders of a majority of shares represented in person or by proxy and entitled to vote on this item will be required for ratification.

The Board recommends that stockholders vote "FOR" ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accountants for fiscal year 2010. Unless marked otherwise, proxies received will be voted "FOR" the ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accountants for 2010.

In the event stockholders do not ratify the appointment, the appointment may be reconsidered by the Audit Committee and the Board. The Company believes that neither the Audit Committee nor the Board is obliged to make any such reconsideration under Delaware law, the rules of the stock exchange on which it is listed, or the rules promulgated by the Securities and Exchange Commission that frame certain specific obligations of the members of all public company audit committees with respect to the selection of independent registered public accountants. Even if the selection is ratified, the Audit Committee in its discretion may select a different independent registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of the Company and our stockholders.

**Recommendation of the Board of Directors:**

The Board recommends a vote "FOR" the ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accountants for 2010.

**PROPOSAL NO. 3**

**AMENDMENT TO INCREASE SHARES IN INCENTIVE PLAN**

On December 3, 2009 the Board approved, subject to stockholder approval, the amendment of the Company's 2004 Incentive Award Plan (the "Award Plan") to increase the shares of common stock available for grant under the Award Plan by 1,300,000 shares. Currently, 231,127 shares remain available under the Award Plan. The principal purpose for increasing the shares available under the Award Plan is to allow the Company to continue to use the Award Plan to continue to further the goals and purposes of the Award Plan. The increase in shares available for grant under the Award Plan shall be approved by a majority of the votes cast by holders of our common stock present in person or by proxy at the Annual Meeting, each share being entitled to one vote.

*The 2004 Incentive Award Plan*

During 2004, the Company adopted the Award Plan to enhance and supplement the 2003 Incentive Award Plan. The principal purpose for adopting the Award Plan was to promote the success of the business and enhance the Company's value by linking the personal interests of employees and directors to its success and by providing these individuals with an incentive for outstanding performance. The Award Plan provides for the grant of incentive stock options, nonqualified stock options, restricted stock, stock appreciation rights, dividend equivalent rights, performance-based awards, deferred stock, stock payments and other stock-based awards (collectively, the "Awards"). As of January 31, 2010 there were 231,127 shares of common stock reserved available for issuance under the Award Plan. The proposed amendment of the Award Plan would increase the aggregate number of shares of common stock reserved and available for issuance under the Award Plan to 1,531,127. Based on the closing price of the common stock on the NASDAQ on January 29, 2010 of \$10.92 per share, the market value of shares of common stock proposed to be available for issuance under the Award Plan would be \$16,719,907.

Grants of options and restricted stock to non-employee directors and to executive officers are made by the board of directors as a whole. The CEO has been delegated authority to make grants to employees other than executive officers.

The foregoing is only a summary of the Award Plan and is qualified by reference to its full text. The 2004 Incentive Award Plan, as amended and restated through June 20, 2007, is filed as Exhibit 10.10 to our Annual Report on Form 10-K, filed on February 27, 2008.

**Equity Plan Information**

*2004 Incentive Award Plan.* In 2004, we adopted our 2004 Incentive Award Plan. The 2004 Award Plan provides us with the ability to award equity-based incentive compensation, such as options to purchase shares of our common stock, stock appreciation rights, dividend equivalent rights, performance awards, restricted stock units, deferred stock and stock payments to employees, consultants and directors.

The principal purpose for the adoption of the 2004 Award Plan was to promote the success of our business and enhance our value by linking the personal interests of employees, consultants and directors to our success and by providing these individuals with an incentive for outstanding performance. We believe that the 2004 Plan also gives us the flexibility to offer a variety of types of compensation and to remain competitive in recruiting and retaining qualified key personnel. In April 2005, the stockholders approved an increase in the number of shares available for grant under the 2004 Award Plan of 600,000 shares of common stock. In April 2007 the stockholders approved an increase in the number of shares available for grant under the 2004 Award Plan of 2,000,000 shares.

**THE BOARD OF DIRECTORS AND COMMITTEES**

The Board of Directors met seven (7) times during 2009 and acted twice by unanimous written consent. Each director, during his term as director, attended at least 75% of the meetings of the Board. Each director, during his term as director, attended at least 75% of the meetings of the committees of the Board of which he was a member. Five directors were present at the annual meeting of stockholders. During 2009, the Board had a standing Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee.

Mr. Schaeffer serves as CEO and Chairman of the Board of Directors. He is the founder of the Company and owns approximately 5% of the Company's stock. His dual role was established 10 years ago when he founded the Company. The board believes that at the Company's current stage of growth the board is best served by a chairman who is involved with the Company on a full-time basis and is

therefore able to bring great depth of knowledge about the Company to this role. The board does not have a designated lead independent director.

The board's role in the Company is to provide general oversight of strategy and operations. As part of its oversight of operations it reviews the performance of Company and the risks involved in the operations of the Company. The Board and the Audit Committee receive regular reports on the status of the Company's internal controls and each has reviewed key operational risks. The board's risk oversight role has no effect on its leadership structure as all directors other than Mr. Schaeffer are independent directors and therefore have no conflict that might discourage critical review.

*Nominating and Corporate Governance Committee*

We established our Nominating and Corporate Governance Committee in April 2005. During 2009, from January 1 to April 23, 2009, the members of this committee were Mr. Brooks and Mr. Ferguson; Mr. Ferguson did not stand for re-election at the April 23<sup>rd</sup> annual meeting. From April 23, 2009 the members of this committee are Messrs. Brooks (Chairman), Liebhaber and Margalit each of whom are independent members of our Board. Our Board has adopted a charter governing the activities of the Nominating and Corporate Governance Committee. The charter of the Nominating and Corporate Governance Committee may be found on the Company's website under the "Investor Relations" link at [www.cogentco.com](http://www.cogentco.com). Pursuant to its charter, the Nominating and Corporate Governance Committee's tasks include assisting the Board of Directors in identifying individuals qualified to become Board members, recommending to the Board director nominees to fill vacancies in the membership of the Board as they occur and, prior to each annual meeting of stockholders, recommending director nominees for election at such meeting.

The Nominating and Governance Committee seeks diversity in the membership of the board. It does not have formal objective criteria for determining the amount of diversity needed or present on the Board. Instead it and the Board seek candidates with a range of experience. Board candidates are considered based upon various criteria, such as skills, knowledge, perspective, broad business judgment and leadership, relevant specific industry or regulatory affairs knowledge, business creativity and vision, experience, and any other factors appropriate in the context of an assessment of the committee's understood needs of the Board at that time. In addition, the committee considers whether the individual satisfies criteria for independence as may be required by applicable regulations and personal integrity and judgment. Accordingly, the Company seeks to attract and retain highly qualified directors who have sufficient time to attend to their substantial duties and responsibilities to the Company.

The Nominating and Corporate Governance Committee has the sole authority to retain, compensate, and terminate any search firm or firms to be used in connection with the identification, assessment, and/or engagement of directors and director candidates. No such firm has been retained by the Company in the past.

The Nominating and Corporate Governance Committee considers proposed nominees whose names are submitted to it by stockholders; however, it does not have a formal process for that consideration. The Company has not to date adopted a formal process because it believes that the informal consideration process has been adequate. The committee intends to review periodically whether a more formal policy should be adopted. If a stockholder wishes to suggest a proposed name for committee consideration, the name of that nominee and related personal information should be forwarded to the Nominating and Corporate Governance Committee, in care of the corporate Secretary, at least three months before the next annual meeting to ensure meaningful consideration by the committee. See also "Notice of Stockholder Business and Nominations" for Bylaw requirements for nominations.

The Nominating and Corporate Governance Committee had two formal meetings in 2009; both meetings were held in conjunction with a scheduled in-person meeting of the full board to

accommodate the views of all members of the Board of Directors concerning its membership and constitution.

Marc Montagner, the nominee for director who is not a director standing for re-election, was recommended to the Nominating and Corporate Governance Committee and the Board by the CEO and a non-management director.

*Stockholder Communication with Board Members*

Although the Company has not to date developed formal processes by which stockholders may communicate directly to directors, it believes that the informal process, in which stockholder communications that are received by the Secretary for the Board's attention, or summaries thereof, are then forwarded to the Board has served the Board's and the stockholders' needs. In view of Securities and Exchange Commission, or SEC, disclosure requirements relating to this issue, the Nominating and Corporate Governance Committee may consider development of more specific procedures. Until any other procedures are developed and posted on the Company's corporate website at [www.cogentco.com](http://www.cogentco.com), any communications to the Board should be sent to it in care of the Secretary.

*Code of Conduct*

The Company's Code of Conduct may be found on the Company's website under the "Investor Relations" link at [www.cogentco.com](http://www.cogentco.com).

*Board Member Attendance at Annual Meetings*

The Company encourages all of its directors to attend the Annual Meeting of Stockholders. The Company generally holds a board meeting coincident with the Annual Meeting to minimize director travel obligations and facilitate their attendance at the Annual Meeting.

*Director Independence*

Nasdaq Marketplace Rules require that a majority of the Board be independent. No director qualifies as independent unless the Board determines that the director has no direct or indirect relationship with the Company that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In assessing the independence of its members, the Board examined the commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships of each member. The Board's inquiry extended to both direct and indirect relationships with the Company. Based upon both detailed written submissions by its members and discussions regarding the facts and circumstances pertaining to each member, considered in the context of applicable Nasdaq Marketplace Rules, the Board has determined that all of the directors nominated for election, other than Mr. Schaeffer, are independent.

*Audit Committee*

The Audit Committee is established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). During 2009, from January 1 to April 23, 2009, the members of this committee were Messrs Liebhaber (Chairman), Bath and Ferguson; Mr. Ferguson did not stand for re-election at the April 23<sup>rd</sup> annual meeting. From April 23, 2009 the members of this committee are Messrs. Liebhaber (Chairman), Bath and Weingarten, each of whom is independent as the term "independence" is defined in the applicable listing standards of Nasdaq and Rule 10A-3 under the Exchange Act. The Board has determined that each of Messrs. Liebhaber, Bath

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and Weingarten qualifies as a financial expert, as that term is defined in the Exchange Act. The responsibilities of this committee include:

the appointment, compensation, retention and oversight of our independent registered public accountants;

reviewing with our independent registered public accountants the plans and results of the audit engagement;

pre-approving professional services provided by our independent registered public accountants;

reviewing our critical accounting policies, our Annual and Quarterly reports on Forms 10-K and 10-Q, and our earnings releases;

reviewing the independence of our independent registered public accountants; and

reviewing the adequacy of our internal accounting controls and overseeing our ethics program.

The Audit Committee met six (6) times during 2009 and did not act by unanimous written consent. The charter of the Audit Committee may be found as *Appendix A* to the Company's proxy statement filed on April 28, 2006 for the Annual Meeting held on June 7, 2006, a copy of which is available at [www.sec.gov](http://www.sec.gov) under the Company's filings with the SEC or at [www.cogentco.com](http://www.cogentco.com) under the tab Investor Relations, under the tab Corporate Governance.

**Audit Committee Report**

To the Board of Directors:

We have reviewed and discussed with management the Company's audited consolidated financial statements as of and for the year ended December 31, 2009.

We have discussed with the independent registered public accountants, Ernst & Young LLP, the matters required to be discussed with us by the American Institute of Certified Public Accountants, the Securities and Exchange Commission, the Nasdaq Stock Market and the Public Company Accounting Oversight Board, including those required by the Statement on Auditing Standards No. 61, as amended.

We have received and reviewed the letter from Ernst & Young LLP required by the Public Company Accounting Oversight Board, and have discussed with Ernst & Young LLP their independence, including the written disclosures and letter required by Rule 3526 of the Public Company Accounting Oversight Board.

Based on the reviews and discussions referred to above, we recommended to the Board of Directors that the audited consolidated financial statements referred to above be included in the Company's Annual Report on Form 10-K for the year ended December 31, 2009 for filing with the Securities and Exchange Commission. The Board of Directors caused the Form 10-K to be so filed.

*Audit Committee:*

Richard Liebhaber  
Timothy Weingarten  
D. Blake Bath

*Compensation Committee*

The Compensation Committee consists of Messrs. Bath, Margalit and Weingarten each of whom is independent as the term "independence" is defined in the applicable listing standards of Nasdaq. Mr. Bath is chairman of the committee. This committee is responsible for determining compensation for our executive officers and other employees, and administering the compensation programs. The Compensation Committee had one formal meeting in 2009 and did not act by unanimous written consent. In 2009 the functions of the Compensation Committee were undertaken by the full board during closed executive session meetings held in conjunction with regularly scheduled in-person meetings of the board and particularly at the board meeting held in December 2009 attended by all members of the Board of Directors. Salary and equity compensation awards for all of the executive officers and key employees of the Company listed in this proxy statement were considered during these meetings and Mr. Schaeffer was absent from any discussions concerning his compensation. The charter of the Compensation Committee is available at [www.cogentco.com](http://www.cogentco.com) under the tab Investor Relations, under the tab Corporate Governance.

**EXECUTIVE OFFICERS AND KEY EMPLOYEES**

Set forth below is certain information concerning the executive officers of the Company. Biographical information on Mr. Schaeffer is included under "Proposal Election of Directors."

***EXECUTIVE OFFICERS***

*Thaddeus G. Weed*, age 49, joined us in February 2000 and served as Vice President and Controller until May 2004 when he became our Chief Financial Officer and Treasurer. From 1997 to 1999, Mr. Weed served as Senior Vice President of Finance and Treasurer at Transaction Network Services, Inc. where Mr. Weed undertook a broad range of financial management responsibilities. From





















































