

COGENT COMMUNICATIONS GROUP INC  
Form DEF 14C  
February 12, 2003

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**SCHEDULE 14C INFORMATION**

**Information Statement Pursuant to Section 14(c) of  
the Securities Exchange Act of 1934**

Check the appropriate box:

- Preliminary Information Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))**
- Definitive Information Statement

**COGENT COMMUNICATIONS GROUP, INC.**

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(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required
- Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11

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

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

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

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(4) Proposed maximum aggregate value of transaction:

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(5) Total fee paid:

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

(1) Amount Previously Paid:

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

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(3) Filing Party:

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(4) Date Filed:

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**1015 31<sup>st</sup> Street N.W.  
Washington, D.C. 20007  
(202) 295-4200**

### **INFORMATION STATEMENT**

This Information Statement is being furnished to the stockholders of Cogent Communications Group, Inc., a Delaware corporation (the "Company") in connection with the proposed amendment and restatement of the Company's Second Amended and Restated Certificate of Incorporation. This proposal is described in more detail in this Information Statement. This Information Statement will be first mailed to stockholders on or about February 12, 2003.

**WE ARE NOT ASKING YOU FOR A PROXY AND  
YOU ARE REQUESTED NOT TO SEND A PROXY.**

#### **Consent Date; Outstanding Shares; Voting Rights**

On February 9, 2003 (the "Consent Date"), certain of the Company's stockholders who held stock as of that date acted by written consent to approve the proposal described in this Information Statement. On the Consent Date, the Company's issued and outstanding capital stock consisted of:

3,483,838 shares of common stock, par value \$0.001 per share (the "Common Stock"), which was held by approximately 302 holders of record;

26,000,000 shares of Series A Participating Convertible Preferred Stock, par value \$0.001 per share (the "Series A Preferred Stock");

19,370,223 shares of Series B Participating Convertible Preferred Stock, par value \$0.001 per share (the "Series B Preferred Stock"); and

49,773,402 shares of Series C Participating Convertible Preferred Stock, par value \$0.001 per share (the "Series C Preferred Stock" and together with the Series A Preferred Stock and Series B Preferred Stock, the "Existing Preferred Stock").

Holders of shares of our Common Stock and Existing Preferred Stock are entitled to the following number of votes on all matters on which they are entitled to a vote:

holders of Common Stock are entitled to one vote for each share held;

holders of Series A Preferred Stock are entitled to one vote for every ten shares held;

holders of Series B Preferred Stock are entitled to one vote for every 7.7048 shares held; and

holders of Series C Preferred Stock are entitled to one vote for every ten shares held.

### **Dissenters' Rights of Appraisal**

Under the laws of the State of Delaware and the Company's charter documents, stockholders will not have the right to dissent and obtain payment for their shares in connection with the proposal described in this Information Statement.

### **Note Regarding Share and Per Share Data**

In connection with the completion of the merger of Allied Riser Communications Corporation ("Allied Riser") with a subsidiary of the Company, which is discussed in the footnotes to the financial statements accompanying this Information Statement, the Company completed a ten-for-one reverse stock split with respect to its common stock. All share and per-share information contained in and accompanying this Information Statement reflects the occurrence of that reverse stock split.

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## **PROPOSAL NO. 1 AMENDMENT AND RESTATEMENT OF THE COMPANY'S CERTIFICATE OF INCORPORATION**

On January 27, 2003, the board of directors unanimously adopted, subject to stockholder approval, the Third Amended and Restated Certificate of Incorporation of the Company (the "Amended and Restated Charter"). On February 9, 2003, stockholders holding capital stock of the Company representing a number of votes sufficient to approve the proposal consented to approve the adoption of the Amended and Restated Charter. The Amended and Restated Charter will increase the number of authorized shares of the Company's Preferred Stock from 98,173,643 shares to 106,276,229 shares by authorizing 8,102,586 additional shares of preferred stock, 1,250,000 of which will be authorized but unissued and undesignated Preferred Stock, 3,426,293 of which will be designated Series D Participating Convertible Preferred Stock (the "Series D Preferred Stock") and 3,426,293 of which will be designated Series E Participating Convertible Preferred Stock (the "Series E Preferred Stock, and together with the Series D Preferred Stock, the "Additional Preferred Stock"). The Company has no current plan, proposal or arrangement, written or otherwise, to issue the authorized but unissued and undesignated Preferred Stock.

The Additional Preferred Stock to be authorized by adoption of the Amended and Restated Charter will have rights and preferences similar to the Existing Preferred Stock as described more fully below. Adoption of the Amended and Restated Charter and issuance of the Preferred Stock will not affect the rights of the holders of currently outstanding Common Stock and the Existing Preferred Stock of the Company, except for effects incidental to increasing the number of shares of Preferred Stock outstanding, such as dilution of the earnings per share and voting rights of current holders of Common Stock and the Existing Preferred Stock and the issuance of additional shares with liquidation rights senior to the Common Stock. The Amended and Restated Charter will become effective upon filing of the Amended and Restated Charter with the Secretary of State of the State of Delaware immediately prior to the consummation of the Settlement Agreement and the Exchange Agreement, as described below.

### **Background**

On December 12, 2001, Allied Riser announced that certain holders of its 7.50% convertible subordinated notes due 2007 filed notices as a group with the Securities and Exchange Commission on Schedule 13D including copies of documents indicating that such group had filed suit in Delaware Chancery Court on December 6, 2001 against Allied Riser and its board of directors (the "Noteholder Litigation"). The suit alleges, among other things, breaches of fiduciary duties and default by Allied Riser under the indenture related to the notes, and requested injunctive relief to prohibit Allied Riser's merger with the Company. The plaintiffs amended their complaint on January 11, 2002 and subsequently served it on Allied Riser. On January 28, 2002, the Court held a hearing on a motion by the plaintiffs to preliminarily enjoin the merger. On January 31, 2002, the Court issued a Memorandum Opinion denying that motion. On July 23, 2002, the plaintiffs filed a motion for partial summary judgment in which they alleged that the merger was a "change of control" as defined by the indenture governing the Allied Riser notes. On November 7, 2002, the Court issued a ruling denying that motion. Instead, the Court determined that there had not been a "change of control," as defined in the indenture. This decision may be appealed by the plaintiffs.

On March 27, 2002, certain holders of the Allied Riser notes filed an involuntary bankruptcy petition under Chapter 7 of the United States Bankruptcy Code against Allied Riser in United States Bankruptcy Court for the Northern District of Texas, Dallas Division. Three of the four petitioners are plaintiffs in the Delaware Chancery Court case described above. Petitioners contend that the acquisition of Allied Riser was a change of control that entitled them to declare the notes were accelerated and are now due and payable. The petition does not name the Company as a party. Management notes, however that pursuant to the terms of the supplemental indenture related to the

notes, the Company is a co-obligor of the notes. On June 11, 2002, the Bankruptcy Court Judge ruled in Allied Riser's favor stating that the involuntary bankruptcy petition would be dismissed. On August 8, 2002, the judge issued a written order dismissing the petition.

Allied Riser has timely made all interest and principal payments on the notes to date.

### **Proposed Settlement of Noteholder Litigation**

In order to end the distraction to management and diversion of resources caused by the actions of certain of the holders of the Allied Riser notes, including specifically the Noteholder Litigation, the Company determined in November of 2002 to attempt to reach a settlement with the noteholders who are party to the Noteholder Litigation. The Company entered into discussions with these noteholders which resulted in the Company, Allied Riser and the noteholders entering into a non-binding letter agreement relating to the settlement of the Noteholder Litigation and the mutual release of the claims by the noteholders, the Company, Allied Riser and certain former directors of Allied Riser. Pursuant to the terms of the letter agreement, the Company and Allied Riser, in consideration of the settlement of the Noteholder Litigation, agreed to exchange shares of Additional Preferred Stock and cash with the noteholders in return for their Allied Riser notes. The Company also agreed to reimburse the noteholders for their legal expenses in connection with the settlement in an amount up to \$100,000.

In order to consummate the settlement agreed to by these parties, the Company, Allied Riser and the holders of \$106,789,000 in face value of the Allied Riser notes will enter into an Exchange Agreement, a Settlement Agreement and an Escrow Agreement. Pursuant to the Exchange Agreement, the Allied Riser noteholders will surrender to Allied Riser all of the notes that they hold, including accrued and unpaid interest thereon, in exchange for an aggregate cash payment by Allied Riser in the amount of \$4,997,725 and an aggregate 3,426,293 shares of Series D Preferred Stock and 3,426,293 shares of Series E Preferred Stock.

Pursuant to the Settlement Agreement, the Allied Riser noteholders will cause the Noteholder Litigation to be dismissed with prejudice and will deliver to the Company, Allied Riser and certain former directors of Allied Riser a general release in exchange for an aggregate cash payment by the Company of \$4,880,256 and a general release from the Company, Allied Riser and certain former Allied Riser directors.

The consummation of the transactions contemplated by the Exchange Agreement and the Settlement Agreement will be subject to the satisfaction of normal and customary conditions.

Pursuant to the Escrow Agreement, the Company and Allied Riser will deposit with an escrow agent the aggregate cash payment in respect of the note exchange, the aggregate cash payment in respect of the settlement of the Noteholder Litigation, and a copy of the general release executed by the Company, Allied Riser and the former Allied Riser directors named in the Noteholder Litigation. The Allied Riser noteholders will deposit with the escrow agent the Allied Riser notes and executed copies of the general release executed by each noteholder. Upon delivery of the shares of Additional Preferred Stock, the escrow agent will be obligated to release the Allied Riser notes and a fully executed general release to the Company and Allied Riser, and the cash payment in respect of the Allied Riser note exchange, the cash payment in respect of the settlement of the Noteholder Litigation and a fully executed general release to the Allied Riser noteholders.

### **Terms of Series D Participating Convertible Preferred Stock and Series E Participating Convertible Preferred Stock**

The complete designation of rights and preferences of the Additional Preferred Stock is set forth in the Amended and Restated Charter, and is attached hereto as Appendix A. The Series D Preferred Stock will be *pari-passu* in all economic respects, including liquidation preference, rights to dividends,

conversion, adjustments and dilution protection, to the Series C Preferred Stock. Series E Preferred Stock will be *pari-passu* in all economic respects to the Series C Preferred Stock except with respect to liquidation preference in which case the Series E Preferred Stock shall be *pari passu* with the Series A Preferred Stock and the Series B Preferred Stock. A summary of certain of the rights and preferences of the Additional Preferred Stock is set forth below.

#### *Dividends*

The holders of the Series D Preferred Stock and Series E Preferred Stock shall be entitled to receive noncumulative dividends *pari passu* with the holders of the Series C Preferred Stock and in preference to any dividend on any other shares of the Company's capital stock at the rate

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of 8% of the initial liquidation value per annum, when and as declared by the board of directors of the Company. The initial liquidation value for the Series D Preferred Stock and the Series E Preferred Stock shall be \$1.2467 per share.

### *Conversion*

Both the Series D Preferred Stock and Series E Preferred Stock may be converted at the election of its holder, at any time, into shares of Common Stock. The initial conversion rate shall be the same as the conversion rate of the Series C Preferred Stock and subject to adjustment as provided in the paragraph below (relating to antidilution). The Series D Preferred Stock and Series E Preferred Stock shall be automatically converted into Common Stock, at the then applicable conversion price (i) in the event that the holders of at least two-thirds of the outstanding Preferred Stock consent to such conversion and all shares of Preferred Stock are then converted and holders of Series D Preferred Stock and Series E Preferred Stock receive identical Common Stock (including with respect to registration under the Securities Act of 1933 as amended) as all other holders of the Preferred Stock or (ii) upon the closing of a firmly underwritten public offering of shares of Common Stock of the Company at an aggregated pre-money valuation of at least \$500 million and for a total offering of not less than \$50 million (before deduction of underwriters commissions and expenses).

### *Antidilution*

The conversion price of the Series D Preferred Stock and Series E Preferred Stock will be subject to adjustment to reduce dilution in the event that the Company issues additional equity securities (other than shares reserved as employee shares and other customary exclusions) at a purchase price less than the applicable conversion price. In such case, the applicable conversion price shall be adjusted so that it is equal to the purchase price of such additional equity securities. The conversion price will also be subject to proportional adjustment for stock splits, stock dividends, recapitalizations and the like.

### *Voting Rights*

The Series D Preferred Stock and the Series E Preferred Stock and other classes of the Preferred Stock will vote together with the Common Stock and not as a separate class except as required by law. Each share of Series D Preferred Stock and Series E Preferred Stock shall have a number of votes equal to the number of shares of Common Stock then issuable upon conversion of such share of Series D Preferred Stock or Series E Preferred Stock.

### *Liquidation Preference; Participation*

Upon any dissolution, liquidation, or winding up of the Company, the holders of outstanding shares of the Series D Preferred Stock and the Series E Preferred Stock will be entitled to receive, out of the assets of the Company remaining after all of the Company's debts and liabilities have been paid

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or otherwise provided for, but before any payments have been made to the holders of Common Stock or any other class or series of capital stock of the Company ranking junior in preference to the Series D Preferred Stock and the Series E Preferred Stock, an amount equal to \$1.2467 per share (the "Series E Original Purchase Price") in the case of the Series E Preferred Stock, plus interest accruing on the Series E Original Purchase Price from the date the Series E Preferred Stock was issued through the date of such payment at an annual rate of interest equal to the three month London Interbank Offered Rate, plus one hundred and fifty (150) basis points and an amount equal to the greater of (1) \$1.2467 per share (the "Series D Original Purchase Price") plus interest accruing on the Series D Original Purchase Price from the issue date of the Series D Preferred Stock through the date of such payment at an annual rate of interest equal to the three month London Interbank Offered Rate, plus one hundred and fifty (150) basis points, or (2) \$2.0091 per share.

After payment has been made in full to the holders of Preferred Stock of their respective liquidation preferences outlined above and subject to certain adjustments, all remaining assets of the Company available for distribution shall be distributed ratably to the holders of the Preferred Stock (on an as-converted-to-common-stock basis) and the holders of the Common Stock until, with respect to the Series D Preferred Stock and the Series E Preferred Stock, such time, if ever, as the amount distributed pursuant to the previous paragraph plus the amount distributed pursuant to the provisions of this paragraph equals, with respect to each outstanding share of Series D Preferred Stock and Series E Preferred Stock, \$3.7401.

### *Board Representation*

The holders of Series D Preferred Stock and Series E Preferred Stock will have the right to vote for election of directors but will not have any contractual right to nominate or otherwise designate any members to the Company's board of directors.

**Registration Rights Agreement and Stockholder Agreement**

The holders of the Series D Preferred Stock and Series E Preferred Stock will enter into a Second Amended and Restated Registration Rights Agreement, by and among the Company and the holders of the Existing Preferred Stock, which will provide for, among other things, registration rights with respect to common stock issued to the holders of the Company's Preferred Stock upon conversion of shares of Preferred Stock. The holders of the Series D Preferred Stock and Series E Preferred Stock will either become parties to the Company's existing Amended and Restated Stockholders Agreement, dated October 16, 2001, or will otherwise be granted rights similar to those set forth in that agreement.

**Dilutive Effect on Holders of Common Stock**

Upon the issuance of the Series D Preferred Stock and the Series E Preferred Stock, the equity interests of our existing common stockholders and preferred stockholders, as a percentage of the total number of shares of the Company's Common Stock assuming conversion of the Preferred Stock, will be diluted.

Holder	Percentage of Outstanding Common Stock Owned (Assuming Conversion of Preferred Stock)	
	Before Issuance of Additional Preferred Stock	After Issuance of Additional Preferred Stock
Common stockholders	25.7%	24.4%
Existing preferred stockholders	74.3%	70.8%
New preferred stockholders		4.8%

Additionally, as a result of the issuance of the Series D Preferred Stock and the Series E Preferred Stock, in the event of any dissolution, liquidation, or winding up of the Company, at least \$6,884,000

will be paid in cash to the holders of the Series D Preferred Stock and at least \$4,272,000 plus accrued interest will be paid in cash to the holders of the Series E Preferred Stock before any payment is made to the holders of Common Stock.

**Vote Required**

The affirmative vote of the holders of a majority of the shares of Common Stock and Existing Preferred Stock (on an as-converted-to-common-stock-basis), voting as a single class, is required to approve the adoption of the Amended and Restated Charter. In addition, the affirmative vote of two-thirds of the shares of the Existing Preferred Stock is required to approve the adoption of the Amended and Restated Charter and the issuance of the Additional Preferred Stock. Stockholders holding at least a majority of the shares of Common Stock and Existing Preferred Stock (on an as-converted-to-common-stock-basis), voting as a single class, and the stockholders holding at least two-thirds of the shares of the Existing Preferred Stock will have acted by written consent to approve the adoption of the Amended and Restated Charter and the issuance of the Additional Preferred Stock.

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information with respect to the beneficial ownership of shares of the Company's capital stock as of January 15, 2003 by:

each stockholder known to us to be a beneficial owner of more than 5% of any class of voting capital stock;

each of our directors;

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each of our named executive officers; and

all of our executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares subject to options, warrants and securities convertible into common stock held by that person that are exercisable as of January 15, 2003 or exercisable within 60 days thereof are deemed beneficially owned. Except as indicated in the footnotes to this table, we believe that each stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite such stockholder's name, except to the extent shared by a spouse under applicable law. This table is based on information supplied by officers, directors and principal stockholders. As of January 15, 2003, there were 98,627,463 shares of capital stock outstanding, of which 3,483,838 shares of Common Stock were outstanding, 26,000,000 shares of Series A Preferred Stock were outstanding, 19,370,223 shares of Series B Preferred Stock and 49,773,402 shares of Series C Preferred Stock were outstanding.

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Unless otherwise noted, the address for each stockholder below is: c/o Cogent Communications Group, Inc., 1015 31st Street, N.W., Washington D.C. 20007.

Name and Address	Common		Series A Preferred		Series B Preferred		Series C Preferred		Percent Voting Control(10)
	Number of Shares	Percent of Class	Number of Shares	Percent of Class	Number of Shares	Percent of Class	Number of Shares	Percent of Class	
Entities affiliated with Jerusalem Venture Partners Building One Mahla, Jerusalem 91487			9,250,000	35.6%	3,296,704	17.0%	16,042,352	32.2%	25.1%
Entities affiliated with Worldview Technology Partners 435 Tasso Street, #120 Palo Alto, CA 94301			9,250,000	35.6%	3,296,704	17.0%	9,625,411	19.3%	19.7%
Entities affiliated with Oak Investment Partners IX, LP One Gorham Island Westport, CT 06880			5,000,000	19.2%	4,395,604	22.7%	9,583,300	19.3%	17.2%
Entities affiliated with Boulder Ventures III, LP 4750 Owings Mills Blvd. Owings Mill, MD 21117			2,000,000	7.7%	659,340	3.4%	1,203,176	2.4%	3.4%
Entities affiliated with Broadview Capital Partners One Bridge Plaza Fort Lee, NJ 07024					3,274,726	16.9%	4,439,721	8.9%	7.4%
Entities affiliated with Nassau Capital Partners					1,538,461	7.9%	2,205,823	4.4%	3.6%
ACON Venture Partners, LP 345 California Street Suite 3300 San Francisco, CA 94104					1,098,901	5.7%			1.2%
SMALLCAP World Fund, Inc.					1,098,901	5.7%	4,973,129	10.0%	5.4%

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	Common		Series A Preferred		Series B Preferred		Series C Preferred		
3000 K Street, NW Suite 230 Washington, D.C. 20007									
Cisco Systems Capital Corporation(1)	710,216	20.4%							5.7%
David Schaeffer(2)	1,651,608	47.4%					1,604,235	3.2%	15.4%
H. Helen Lee(3)	99,878	2.9%							*
Erel Margalit(4)			9,250,000	35.6%	3,296,704	16.6%	16,042,352	32.2%	25.1%
James Wei(5)			9,250,000	35.6%	3,296,704	16.6%	9,625,411	19.3%	19.7%
Edward Glassmeyer(6)			5,000,000	19.2%	4,395,604	22.2%	9,583,300	19.3%	17.2%
Mark Schleifer(7)	11,874	*							*
Robert Beury(8)	12,763	*							*
Directors and executive officers as a group (11 persons)(9)	1,833,983	52.6%	23,500,000	90.4%	14,307,034	72.2%	41,295,019	83.0%	77.5%

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\*

Less than 1%

(1)

Constitutes the number of shares of common stock subject to warrants issued in connection with the Company's credit facility with Cisco Systems Capital Corporation.

(2)

Includes 135,000 shares of common stock held by the Schaeffer Descendant's Trust. Mr. Schaeffer disclaims beneficial ownership of such shares. Includes 291,608 shares which may be acquired upon exercise of stock options which are exercisable currently or within 60 days of January 15, 2003.

(3)

Includes 95,745 shares which may be acquired upon exercise of stock options which are exercisable currently or within 60 days of January 15, 2003.

(4)

Includes 28,589,056 shares of preferred stock held by entities affiliated with Jerusalem Venture Partners, of which Mr. Margalit is Managing General Partner, including: (a) JVP III, LP, (b) JVP III (Israel) LP, (c) JVP Entrepreneurs Fund LP, (d) JVP IV, LP, (e) JVP-IV-A LP, and (f) JVP IV (Israel) LP. Mr. Margalit disclaims beneficial ownership of such shares.

(5)

Includes 22,172,115 shares of preferred stock held by entities affiliated with Worldview Technology Partners, of which Mr. Wei is a general partner, including: (a) Worldview Technology Partners III, LP, (b) Worldview Technology International III, LP, (c) Worldview Strategy III, LP, (d) Worldview III Carrier Fund, LP, (e) Worldview Technology Partners IV, LP, (f) Worldview Technology International IV, LP, and (g) Worldview Strategy Partners IV, LP. Mr. Wei disclaims beneficial ownership of such shares.

(6)

Includes 18,978,904 shares of preferred stock held by: Oak Investment Partners IX, LP, Oak IX Affiliates Fund, LP, and Oak IX Affiliates (Annex), LP. Mr. Glassmeyer disclaims beneficial ownership of such shares.

(7)

Common shares include 11,874 shares which may be acquired upon exercise of stock options which are exercisable currently or within 60 days of January 15, 2003.

(8)

Common shares include 12,763 shares which may be acquired upon exercise of stock options which are exercisable currently or within 60 days of January 15, 2003.

(9)



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See footnotes (1) through (7) above. Consists of David Schaeffer, H. Helen Lee, Mark Schleifer, Robert Beury, Erel Margalit, James Wei, Edward Glassmeyer, R. Brad Kummer, Neale D'Rozario, Timothy O'Neill, and Thaddeus Weed. Neale D'Rozario, the Company's Chief Information Officer, resigned his position with the Company effective January 16, 2003.

(10)

Based on beneficial ownership of shares, with all shares of Common Stock and Preferred Stock voting as a single class in accordance with the voting provisions of the Company's Certificate of Incorporation.

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### CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION

You should read this Information Statement together with the financial statements and related notes and other information accompanying this Information Statement. The results discussed therein are not necessarily indicative of the results to be expected in any future periods. Certain matters discussed therein are forward-looking statements. This Information Statement may contain "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws, including any projections of earnings, revenues or other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements concerning proposed new services or developments; any statements regarding future economic conditions or performance; any statements of belief; and any statements of assumptions underlying any of the foregoing. Forward-looking statements may include the words "may," "will," "estimate," "intend," "continue," "believe," "expect" or "anticipate" and other similar words. Such forward-looking statements may be contained in "Management's Discussion and Analysis of Financial Condition and Results of Operations," (attached to this Information Statement in Appendix C) among other places.

Although we believe that the expectations reflected in any of our forward-looking statements are reasonable, actual results could differ materially from those projected or assumed in any of our forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change and to inherent risks and uncertainties. Key risks to our Company are described in our annual report on Form 10-K filed with the Securities and Exchange Commission. We do not intend, and undertake no obligation, to update any forward-looking statement.

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### FINANCIAL INFORMATION REGARDING THE COMPANY

#### Financial Statements

The Company's audited balance sheets as of December 31, 2001 and 2000 audited statements of operations, statements of stockholders' equity and statements of cash flows for the years ended 2001, 2000 and 1999 and related notes to the financial statements are attached to this Information Statement in Appendix B (the "Audited Financial Statements").

The Company's unaudited condensed consolidated balance sheet as of September 30, 2002 and unaudited condensed statements of operations, and condensed consolidated statements of cash flows and related notes to the condensed consolidated financial statements for the three and nine months ended September 30, 2002 and 2001 (the "Unaudited Financial Statements") are also attached to this Information Statement in Appendix B.

Also included in this Information Statement is an unaudited pro forma consolidated balance sheet as of September 30, 2002 and unaudited pro forma consolidated statements of operations for the twelve months ending December 31, 2001 and nine months ending September 30, 2002 and the related notes to the unaudited pro forma consolidated balance sheet and the unaudited pro forma consolidated income statements (the "Pro Forma Financial Statements"). The Pro Forma Financial Statements give effect to the Company's issuance of 3,426,293 shares of Series D Preferred Stock and 3,426,293 shares of Series E Preferred Stock, which will be issued to the Participating Noteholders upon the consummation of the transactions contemplated by the Exchange Agreement and the Settlement Agreement and the cancellation of \$106,789,000 in principal amount of, and the related accrued interest on, the Allied Riser notes and the payment of approximately \$9.9 million in cash.

#### Supplementary Financial Information

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The following tables present unaudited quarterly financial information for the eleven quarters ended September 30, 2002. The Company believes this information reflects all adjustments (consisting only of normal recurring adjustments) that it considers necessary for a fair presentation of such information in accordance with generally accepted accounting principles. The results for any quarter are not necessarily indicative of results for any future period (in thousands, except per share data):

Year-Ended December 31, 2002				
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	
Net Revenue	\$ 3,542	\$ 18,578	\$ 15,960	
Operating loss	\$ (16,684)	\$ (15,523)	\$ (16,875)	
Net loss	\$ (17,959)	\$ (24,562)	\$ (25,409)	
Net loss applicable to common stock	\$ (17,959)	\$ (24,562)	\$ (25,409)	
Basic and diluted net loss per common share	\$ (6.81)	\$ (7.18)	\$ (7.33)	
Weighted average number of shares outstanding	2,637,951	3,421,710	3,464,403	
Year-Ended December 31, 2001				
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter
Net Revenue	\$ 90	\$ 657	\$ 2,271	
Operating loss	\$ (12,975)	\$ (14,527)	\$ (18,657)	
Net loss	\$ (12,794)	\$ (15,188)	\$ (21,483)	
Net loss applicable to common stock	\$ (12,794)	\$ (15,188)	\$ (45,651)	
Basic and diluted net loss per common share	\$ (9.12)	\$ (10.81)	\$ (12.39)	
Weighted average number of shares outstanding	1,402,798	1,404,587	1,408,614	1,417,522
Year-Ended December 31, 2000				
	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter
Net Revenue	\$	\$	\$	
Operating loss	\$ (284)	\$ (1,510)	\$ (8,499)	
Net loss	\$ (161)	\$ (1,378)	\$ (7,790)	
Net loss applicable to common stock	\$ (161)	\$ (1,378)	\$ (7,790)	
Basic and diluted net loss per common share	\$ (0.12)	\$ (1.00)	\$ (5.57)	
Weighted average number of shares outstanding	1,360,000	1,381,354	1,390,072	1,397,515

### Management's Discussion and Analysis of Financial Condition and Results of Operations

Attached to this Information Statement in Appendix C is management's discussion and analysis of the Company's financial condition, changes in financial condition and results of operations for each of the fiscal years and interim periods covered by the Audited Financial Statements and the Unaudited Financial Statements. We encourage you to read the full text of Appendix C to gain a better understanding of the Company's historical financial statements.

#### Subsequent Events

In December 2002 the Company reached an agreement with one of its vendors to settle the litigation brought by that vendor against Allied Riser. Under this settlement, Allied Riser will make a cash payment to the vendor of approximately \$1.6 million in 2003 and the vendor will dismiss the litigation and accept that cash payment as payment in full of amounts due to the vendor under the contracts that are the subject of the litigation.

#### Quantitative and Qualitative Disclosures About Market Risk

All of our financial interests that are sensitive to market risk are entered into for purposes other than trading. Our primary market risk exposure is related to our marketable securities and credit facility. We place our marketable securities investments in instruments that meet high credit quality standards as specified in our investment policy guidelines. Marketable securities were approximately \$54.1 million at September 30, 2002, \$51.7 million of which are considered cash equivalents and mature in 90 days or less and \$2.4 million are short-term

investments consisting of commercial paper.

Our credit facility provides for secured borrowings at the 90-day London Interbank Offered Rate plus a specified margin based upon our leverage ratio, as defined in the agreement. The interest rate resets on a quarterly basis and was a weighted average of 6.8% as of September 30, 2002. Interest payments are deferred and begin in 2005. Borrowings are secured by a pledge of all of our assets. The credit facility matures on December 31, 2008. Borrowings may be repaid at any time without penalty subject to minimum payment amounts.

If market rates were to increase immediately and uniformly by 10% from the level at September 30, 2002, the change to our interest sensitive assets and liabilities would have an immaterial effect on our financial position, results of operations and cash flows over the next fiscal year. A 10% increase in the weighted-average interest rate for the three-month period ended September 30, 2002 would have increased interest expense for the period by approximately \$0.4 million.

**UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS**

The following unaudited pro forma consolidated financial statements and explanatory notes have been prepared to give effect to the proposed settlement of the Company's litigation with certain holders of Allied Riser convertible subordinated notes. In order to consummate the settlement, it is anticipated that in February 2003, the Company, Allied Riser and the holders of \$106,789,000 in face value of the Allied Riser notes will enter into an Exchange Agreement, a Settlement Agreement and an Escrow Agreement. Pursuant to the Exchange Agreement, the Allied Riser noteholders will surrender to Allied Riser all of the notes that they hold including accrued and unpaid interest in exchange for a cash payment by Allied Riser in the amount of approximately \$5.0 million and the issuance by the Company of 3,426,293 shares of Series D Preferred Stock and 3,426,293 shares of Series E Preferred Stock to Allied Riser, which will transfer such shares to the Allied Riser Noteholders (the "Exchange"). Pursuant to the Settlement Agreement, the Allied Riser noteholders will cause the noteholder litigation to be dismissed with prejudice and will deliver to the Company a general release in exchange for a cash payment by the Company of approximately \$4.9 million and a general release from the Company, Allied Riser and certain former Allied Riser directors (the "Settlement").

In accordance with Article 11 of Regulation S-X under the Securities Act, unaudited pro forma financial statements as of September 30, 2002, and for the nine months ended September 30, 2002, and the year ended December 31, 2001, have been prepared to reflect, for accounting purposes, the payment to settle the noteholder litigation and the payment of cash and issuance of preferred stock in exchange for the surrender \$106,789,000 in face value of the notes plus any accrued interest.

The following pro forma financial statements have been prepared based upon the historical financial statements of the Company. The pro forma financial statements should be read in conjunction with (a) the historical consolidated financial statements of the Company as of December 31, 2001 and 2000, for the years ended December 31, 2001 and 2000, and for the period from inception (August 9, 1999) to December 31, 1999, and the unaudited condensed consolidated financial statements as of September 30, 2002, and for the nine month period ended September 30, 2002, included in this proxy statement.

The pro forma statements of operations assume that the Settlement and Exchange were completed on January 1, 2001. The pro forma balance sheet assumes that the Settlement and Exchange were completed on September 30, 2002. The pro forma financial statements are provided for illustrative purposes only, and are not necessarily indicative of the operating results that would have occurred if this transaction had been consummated at the beginning of the periods indicated, nor are they necessarily indicative of any future operating results.

**Cogent Communications Group, Inc. and Subsidiaries**  
**Unaudited Pro Forma Consolidated Balance Sheet**  
**As of September 30, 2002**  
**(in thousands, except share amounts)**

Historical Cogent	Pro Forma Adjustments	Pro Forma Cogent
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<b>ASSETS</b>			
<b>Current assets:</b>			
Cash and cash equivalents	51,669(a)	\$ (9,878)	\$ 41,791
Short term investments	2,413		2,413
Accounts receivable, net of allowance for doubtful accounts of \$3,847	5,432		5,432
Prepaid expenses and other current assets	3,665		3,665
<b>Total current assets</b>	<b>63,179</b>		<b>53,301</b>
<b>Property and Equipment:</b>			
Property and equipment	339,012		339,012
Accumulated depreciation and amortization	(34,076)		(34,076)
	<b>304,936</b>		<b>304,936</b>
<b>Other Assets</b>	<b>20,557</b>		<b>20,557</b>
<b>Intangible Assets:</b>			
Intangible assets	23,373		23,373
Accumulated amortization	(6,580)		(6,580)
	<b>16,793</b>		<b>16,793</b>
<b>Total assets</b>	<b>\$ 405,465</b>		<b>\$ 395,587</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
<b>Current Liabilities:</b>			
Accounts payable	8,294		8,294
Accrued liabilities	24,761(b)	\$ (2,670)	22,091
Capital leases - current portion	3,794		3,794
<b>Total current liabilities</b>	<b>36,849</b>		<b>34,179</b>
<b>Cisco credit facility</b>	<b>223,556</b>		<b>223,556</b>
<b>Convertible Notes Allied Riser, net of discount of \$79,745</b>	<b>37,235(c)</b>	<b>\$ (33,991)</b>	<b>3,244</b>
<b>Capital leases, net of current</b>	<b>50,884</b>		<b>50,884</b>
<b>Other long term liabilities</b>	<b>1,206</b>		<b>1,206</b>
<b>Total liabilities</b>	<b>349,730</b>		<b>313,069</b>
<b>Stockholders' Equity:</b>			
Convertible preferred stock, Series A, \$0.001 par value: 26,000,000 shares authorized, issued and outstanding, liquidation preference of \$30,061	25,892		25,892
Convertible preferred stock, Series B, \$0.001 par value: 20,000,000 shares authorized, 19,370,223 shares issued and outstanding, liquidation preference of \$99,168	88,009		88,009
Convertible preferred stock, Series C, \$0.001 par value: 52,137,643 shares authorized, 49,773,402 shares issued and outstanding, liquidation preference of \$100,000	61,345		61,345
Convertible preferred stock, Series D, \$0.001 par value: 3,426,293 shares authorized, 3,426,293 shares issued and outstanding, liquidation preference of \$6,884		(d) \$ 4,272	4,272

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	<u>Historical Cogent</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Cogent</u>
Convertible preferred stock, Series E, \$0.001 par value: 3,426,293 shares authorized, 3,426,293 shares issued and outstanding, liquidation preference of \$4,272		(d) \$ 4,272	4,272
Common stock, \$0.001 par value, 21,100,000 shares authorized 3,483,838 shares issued and outstanding	4		4
Additional paid-in capital	49,322		49,322
Deferred compensation	(6,985)		(6,985)
Stock purchase warrants	9,013		9,013
Accumulated other comprehensive income (loss)	(12)		(12)
Accumulated deficit	(170,853)(e) \$	18,239	(152,614)
<b>Total stockholders equity</b>	<b>55,735</b>		<b>82,518</b>
<b>Total liabilities &amp; stockholders equity</b>	<b>\$ 405,465</b>		<b>\$ 395,587</b>

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**NOTES TO THE UNAUDITED PRO FORMA CONSOLIDATED BALANCE SHEET  
AS OF SEPTEMBER 30, 2002**

- (a) Represents the cash payment of approximately \$4.9 million under the Settlement to dismiss the noteholder litigation and a cash payment of approximately \$5.0 million under the Exchange.
- (b) Represents the elimination of the accrued interest related to the \$106.8 million par value 7.5% convertible subordinated notes due 2007 under the Exchange.
- (c) Represents the retireme