

COGENT COMMUNICATIONS GROUP INC
Form SC 13D/A
April 06, 2004

**UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION**

Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. 1)*

Cogent Communications Group, Inc.

(Name of Issuer)

Common Stock, \$0.001 par value per share

(Title of Class of Securities)

19239V104

(CUSIP Number)

**Edward F. Glassmeyer
Oak Management Corporation
One Gorham Island
Westport, CT 06880
(203) 226-8346**

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

**Copies to:
Michael J. Herling, Esq.
Finn Dixon & Herling LLP
One Landmark Square
Stamford, CT 06901
(203) 325-5000**

March 30, 2004

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(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 19239V104

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Oak Investment Partners IX, Limited Partnership
06-1556218

2. Check the Appropriate Box if a Member of a Group (See Instructions)
(a)
(b)

3. SEC Use Only

4. Source of Funds (See Instructions)
WC

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

6. Citizenship or Place of Organization
Delaware

7. Sole Voting Power
76,647,426

Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With

8. Shared Voting Power
None.

9. Sole Dispositive Power
76,647,426

10. Shared Dispositive Power
None.

11. Aggregate Amount Beneficially Owned by Each Reporting Person
76,647,426

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

13. Percent of Class Represented by Amount in Row (11)
14.9%*

14. Type of Reporting Person (See Instructions)
PN

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Oak Associates IX, LLC
06-1556230
 2. Check the Appropriate Box if a Member of a Group (See Instructions)
 - (a)
 - (b)
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
 6. Citizenship or Place of Organization
Delaware
- | | | |
|---|-----|--|
| | 7. | Sole Voting Power
None. |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | 8. | Shared Voting Power
76,647,426 |
| | 9. | Sole Dispositive Power
None. |
| | 10. | Shared Dispositive Power
76,647,426 |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
76,647,426
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11)
14.9%*
 14. Type of Reporting Person (See Instructions)
OO-LLC

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Oak IX Affiliates Fund A, Limited Partnership
06-1571899
 2. Check the Appropriate Box if a Member of a Group (See Instructions)
 - (a)
 - (b)
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
 6. Citizenship or Place of Organization
Delaware
- | | | | |
|---|-----|-------------------------------------|--|
| | 7. | Sole Voting Power
1,823,658 | |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | 8. | Shared Voting Power
None. | |
| | 9. | Sole Dispositive Power
1,823,658 | |
| | 10. | Shared Dispositive Power
None. | |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
1,823,658
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11)
0.4%*
 14. Type of Reporting Person (See Instructions)
PN

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Oak IX Affiliates Fund, Limited Partnership
06-1556229

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a)	o
(b)	y

3. SEC Use Only

4. Source of Funds (See Instructions)
WC

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) o

6. Citizenship or Place of Organization
Delaware

	7.	Sole Voting Power 829,822
Number of Shares Beneficially Owned by Each Reporting Person With	8.	Shared Voting Power None.
	9.	Sole Dispositive Power 829,822
	10.	Shared Dispositive Power None.

11. Aggregate Amount Beneficially Owned by Each Reporting Person
829,822

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) y

13. Percent of Class Represented by Amount in Row (11)
0.2%*

14. Type of Reporting Person (See Instructions)
PN

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Oak IX Affiliates, LLC
06-1556233
 2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a)	o
(b)	y
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) o
 6. Citizenship or Place of Organization
Delaware
- | | | |
|---|-----|---------------------------------------|
| | 7. | Sole Voting Power
None. |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | 8. | Shared Voting Power
2,653,480 |
| | 9. | Sole Dispositive Power
None. |
| | 10. | Shared Dispositive Power
2,653,480 |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
2,653,480
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) y
 13. Percent of Class Represented by Amount in Row (11)
0.5%*
 14. Type of Reporting Person (See Instructions)
OO-LLC

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Oak Management Corporation
06-0990851
 2. Check the Appropriate Box if a Member of a Group (See Instructions)
 - (a)
 - (b)
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
 6. Citizenship or Place of Organization
Delaware
- | | | | |
|---|-----|--|--|
| | 7. | Sole Voting Power
None. | |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | 8. | Shared Voting Power
79,300,906 | |
| | 9. | Sole Dispositive Power
None. | |
| | 10. | Shared Dispositive Power
79,300,906 | |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
79,300,906
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11)
15.4%*
 14. Type of Reporting Person (See Instructions)
CO

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Bandel L. Carano
 2. Check the Appropriate Box if a Member of a Group (See Instructions)
 - (a)
 - (b)
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
 6. Citizenship or Place of Organization
United States
- | | | | |
|---|----|-----|--|
| | 7. | | Sole Voting Power
None. |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | | 8. | Shared Voting Power
79,300,906 |
| | | 9. | Sole Dispositive Power
None. |
| | | 10. | Shared Dispositive Power
79,300,906 |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
79,300,906
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11)
15.4%*
 14. Type of Reporting Person (See Instructions)
IN

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Gerald R. Gallagher
 2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a)	<input type="radio"/>
(b)	<input checked="" type="radio"/>
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
 6. Citizenship or Place of Organization
United States
- | | | |
|---|-----|--|
| | 7. | Sole Voting Power
None. |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | 8. | Shared Voting Power
79,300,906 |
| | 9. | Sole Dispositive Power
None. |
| | 10. | Shared Dispositive Power
79,300,906 |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
79,300,906
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11)
15.4%*
 14. Type of Reporting Person (See Instructions)
IN

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Edward F. Glassmeyer
 2. Check the Appropriate Box if a Member of a Group (See Instructions)
 - (a)
 - (b)
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
 6. Citizenship or Place of Organization
United States
- | | | |
|---|-----|--|
| | 7. | Sole Voting Power
None. |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | 8. | Shared Voting Power
79,300,906 |
| | 9. | Sole Dispositive Power
None. |
| | 10. | Shared Dispositive Power
79,300,906 |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
79,300,906
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11)
15.4%*
 14. Type of Reporting Person (See Instructions)
IN

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Fredric W. Harman
 2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a)	<input type="radio"/>
(b)	<input checked="" type="radio"/>
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
 6. Citizenship or Place of Organization
United States
- | | | |
|---|-----|--|
| | 7. | Sole Voting Power
None. |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | 8. | Shared Voting Power
79,300,906 |
| | 9. | Sole Dispositive Power
None. |
| | 10. | Shared Dispositive Power
79,300,906 |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
79,300,906
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11)
15.4%*
 14. Type of Reporting Person (See Instructions)
IN

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)
Ann H. Lamont
 2. Check the Appropriate Box if a Member of a Group (See Instructions)
 - (a)
 - (b)
 3. SEC Use Only
 4. Source of Funds (See Instructions)
WC
 5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)
 6. Citizenship or Place of Organization
United States
- | | | | |
|---|-----|--------------------------|------------|
| | 7. | Sole Voting Power | None. |
| Number of
Shares
Beneficially
Owned by
Each
Reporting
Person With | 8. | Shared Voting Power | 79,300,906 |
| | 9. | Sole Dispositive Power | None. |
| | 10. | Shared Dispositive Power | 79,300,906 |
11. Aggregate Amount Beneficially Owned by Each Reporting Person
79,300,906
 12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)
 13. Percent of Class Represented by Amount in Row (11)
15.4%*
 14. Type of Reporting Person (See Instructions)
IN

* please see Item 5 with respect to the determination of the number of shares of Common Stock deemed to be outstanding

Amendment No. 1 to
Statement on Schedule 13D

This Amendment No. 1 to Statement on Schedule 13D relates to the beneficial ownership of common stock, par value \$0.001 per share (the Common Stock), of Cogent Communications Group, Inc., a Delaware corporation (the Company). This Amendment No. 1 to Schedule 13D is being filed on behalf of Oak Investment Partners IX, Limited Partnership, a Delaware limited partnership (Oak Investment Partners IX), Oak Associates IX, LLC, a Delaware limited liability company (Oak Associates IX), Oak IX Affiliates Fund A, Limited Partnership, a Delaware limited partnership (Oak IX Affiliates Fund A), Oak IX Affiliates Fund, Limited Partnership, a Delaware limited partnership (Oak IX Affiliates Fund), Oak IX Affiliates, LLC, a Delaware limited liability company (Oak IX Affiliates), Oak Management Corporation, a Delaware corporation (Oak Management), Bandel L. Carano, Gerald R. Gallagher, Edward F. Glassmeyer, Fredric W. Harman and Ann H. Lamont (collectively, the Reporting Persons), and amends and supplements the Schedule 13D filed with the Commission by the Reporting Persons on August 8, 2003. Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given to such terms in the Schedule 13D.

Item 3. Source and Amount of Funds or Other Consideration

Item 3 is hereby amended and supplemented by the addition of the following paragraphs:

Pursuant to an Agreement and Plan of Merger, dated as of January 2, 2004 (the Symposium Gamma Merger Agreement), among the Company, Lux Merger Sub, Inc. (Lux) and Symposium Gamma, Inc. (Symposium Gamma), Lux was merged with and into Symposium Gamma with Symposium Gamma surviving as a wholly-owned subsidiary of the Company. Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A each held Symposium Gamma common stock prior to the completion of the merger. Under the terms of the Symposium Gamma Merger Agreement, on January 5, 2004, (i) the 124 shares of Symposium Gamma common stock then held by Oak Investment Partners IX were converted into 290 shares of Series I Participating Convertible Preferred Stock, par value \$0.001, of the Company (Series I Preferred Stock), (ii) the 1 share of Symposium Gamma common stock then held by Oak IX Affiliates Fund was converted into 3 shares of Series I Preferred Stock and (iii) the 3 shares of Symposium Gamma common stock then held by Oak IX Affiliates Fund A were converted into 7 shares of Series I Preferred Stock. The purchase price for the Symposium Gamma common stock originally purchased by Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A was furnished from the investment capital of Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A contributed by their investors. No part of such purchase price was borrowed by such Reporting Persons for the purpose of acquiring such securities. No additional consideration was paid by Oak Investment Partners IX, Oak IX Affiliates Fund or Oak IX Affiliates Fund A in connection with the conversion of Symposium Gamma common stock into shares of Common Stock of the Company.

Each share of Series I Preferred Stock is convertible into Common Stock at an initial conversion price of \$0.1613, or at an initial conversion rate of approximately 6,199.628 shares of Common Stock for each share of Series I Preferred Stock converted, subject to antidilution adjustments (subject to certain exceptions) and certain other adjustments as set forth in the Certificate of Designations, Preferences and Rights of Series I Preferred Stock of the Company listed as Exhibit G hereto (the Series I Certificate of Designation).

Pursuant to an Agreement and Plan of Merger, dated as of March 30, 2004 (the Symposium Omega Merger Agreement), among the Company, DE Merger Sub, Inc. (DE Sub) and Symposium Omega, Inc. (Symposium Omega), DE Sub was merged with and into Symposium Omega with Symposium Omega surviving as a wholly-owned subsidiary of the Company. Oak Investment Partners IX,

Oak IX Affiliates Fund and Oak IX Affiliates Fund A each held Symposium Omega common stock prior to the completion of the merger. Under the terms of the Symposium Omega Merger Agreement, on March 30, 2004, (i) the 522 shares of Symposium Omega common stock then held by Oak Investment Partners IX were converted into 522 shares of Series J Participating Convertible Preferred Stock, par value \$0.001, of the Company (Series J Preferred Stock), (ii) the 6 shares of Symposium Omega common stock then held by Oak IX Affiliates Fund were converted into 6 shares of Series J Preferred Stock and (iii) the 12 shares of Symposium Omega common stock then held by Oak IX Affiliates Fund A were converted into 12 shares of Series J Preferred Stock. The purchase price for the Symposium Omega common stock originally purchased by Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A was furnished from the investment capital of Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A contributed by their investors. No part of such purchase price was borrowed by such Reporting Persons for the purpose of acquiring such securities. No additional consideration was paid by Oak Investment Partners IX, Oak IX Affiliates Fund or Oak IX Affiliates Fund A in connection with the conversion of Symposium Omega common stock into shares of Common Stock of the Company.

Each share of Series J Preferred Stock is convertible into Common Stock at an initial conversion price of \$0.1613, or at an initial conversion rate of approximately 30,998.15 shares of Common Stock for each share of Series J Preferred Stock converted, subject to antidilution adjustments (subject to certain exceptions) and certain other adjustments as set forth in the Corrected Certificate of Designations, Preferences and Rights of Series J Preferred Stock of the Company listed as Exhibit H hereto (the Series J Certificate of Designation).

This Item 3 (and the other Items of this statement) do not provide a complete description of the Series I Certificate of Designation or the Series J Certificate of Designation, which are listed as Exhibits G and H hereto respectively, and each such description is qualified in its entirety by reference to the respective document.

Item 4.

Purpose of Transaction

The last seven paragraphs contained in Item 4 are hereby deleted and replaced by the following:

Series I Preferred Stock. Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A each received shares of Series I Preferred Stock upon conversion of shares of Symposium Gamma common stock pursuant to the Symposium Gamma Merger Agreement all as described in Item 3 above. As a condition to the consummation of the merger under the Symposium Gamma Merger Agreement, the Company was obligated to file the Series I Certificate of Designation, which provides that the Series I Preferred Stock has certain weighted average antidilution protection with respect to the conversion price of the Series I Preferred Stock and certain liquidation, conversion and voting rights. Descriptions of such rights contained herein are qualified in their entirety by reference to the Series I Certificate of Designation listed as Exhibit G hereto.

Series I Certificate of Designation Conversion of Series I Preferred Stock. Pursuant to the Series I Certificate of Designation, all of the shares of Series I Preferred Stock shall be automatically converted into Common Stock upon the public offering by the Company of its Common Stock in which the cash proceeds are at least \$50,000,000. The Series I Preferred Stock may also be converted at the election of each holder after the earlier of June 30, 2004 and the date on which the Company files an amendment to its Certificate of Incorporation amending the terms of each sub-series of Series G Preferred Stock providing that the issuance of shares of Series I Preferred Stock or the conversion of such shares into Common Stock shall not be deemed an issuance of Additional Shares of Common Stock as that term is defined in the Certificate of Designations, Preferences and Rights of such sub-series of Series G Preferred Stock.

Series I Certificate of Designation Dividends. In the event that any dividend or other distribution payable in cash or other property is declared on the Common Stock or any security that is pari passu or junior to the Series I Preferred Stock (other than dividends payable solely in shares of Common Stock), the shares of Series I Preferred Stock shall be entitled to receive an amount equal per share (on an as-if converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock or other security that is pari passu or junior to the Series I Preferred Stock. As of the date hereof, there are no dividends declared on the Series I Preferred Stock.

Series I Certificate of Designation Voting. As set forth in the Series I Certificate of Designation, and except as otherwise provided by applicable law, the holders of Series I Preferred Stock (i) shall be entitled to vote with the holders of Common Stock on all matters submitted for a vote of holders of Common Stock and (ii) shall be entitled to one vote for each share of Common Stock such holder of Series I Preferred Stock would receive upon conversion of such share of Series I Preferred Stock into Common Stock.

Series I Certificate of Designation Liquidation Preference. In the event of the Company's liquidation, dissolution or winding up or upon a merger or acquisition of the Company by another company or person or any other change in control transaction, the holders of the Series I Preferred Stock will be entitled to a primary liquidation preference before any amounts are paid to the holders of Common Stock or any other equity securities of the Company (other than the primary liquidation preference of the Series F Preferred Stock, the primary liquidation preference of the Series G Preferred Stock and the primary liquidation preference of the Series J Preferred Stock, each of which liquidation preference shall be pari passu with the primary liquidation preference of the Series I Preferred Stock). The primary liquidation preference of the Series I Preferred Stock is equal to \$1,000 per share. In addition, the holders of the Series I Preferred Stock will be entitled to a secondary liquidation preference before any additional amounts are paid to the holders of the Common Stock or any other equity securities of the Company (other than the primary liquidation preference of the Series H Preferred Stock, the secondary liquidation preference of the Series G Preferred Stock and the secondary liquidation preference of the Series J Preferred Stock, each of which liquidation preference shall be pari passu with the secondary liquidation preference of the Series I Preferred Stock). The secondary liquidation preference of the Series I Preferred Stock is equal to \$2,000 per share. In addition, the holders of the Series I Preferred Stock shall participate with the holders of the Common Stock, Series F Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series J Preferred Stock ratably on an as-converted basis, in the distribution of the remaining assets of the Company available for distribution.

Series J Preferred Stock. Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A each received shares of Series J Preferred Stock upon conversion of shares of Symposium Omega common stock pursuant to the Symposium Omega Merger Agreement all as described in Item 3 above. As a condition to the consummation of the merger under the Symposium Omega Merger Agreement, the Company was obligated to file the Series J Certificate of Designation, which provides that the Series J Preferred Stock has certain weighted average antidilution protection with respect to the conversion price of the Series J Preferred Stock and certain liquidation, conversion and voting rights. Descriptions of such rights contained herein are qualified in their entirety by reference to the Series J Certificate of Designation listed as Exhibit H hereto.

Series J Certificate of Designation Conversion of Series J Preferred Stock. Pursuant to the Series J Certificate of Designation, all of the shares of Series J Preferred Stock shall be automatically converted into Common Stock upon the public offering by the Company of its Common Stock in which the cash proceeds are at least \$50,000,000. The Series J Preferred Stock may also be converted at the election of each holder after the earlier of June 30, 2004 and the date on which the Company files an amendment to its Certificate of Incorporation amending the terms of each sub-series of Series G Preferred

Stock providing that the issuance of shares of Series I Preferred Stock or the conversion of such shares into Common Stock shall not be deemed an issuance of Additional Shares of Common Stock as that term is defined in the Certificate of Designations, Preferences and Rights of such sub-series of Series G Preferred Stock.

Series J Certificate of Designation Dividends. In the event that any dividend or other distribution payable in cash or other property is declared on the Common Stock or any security that is pari passu or junior to the Series J Preferred Stock (other than dividends payable solely in shares of Common Stock), the shares of Series J Preferred Stock shall be entitled to receive an amount equal per share (on an as-if converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock or other security that is pari passu or junior to the Series J Preferred Stock. As of the date hereof, there are no dividends declared on the Series J Preferred Stock.

Series J Certificate of Designation Voting. As set forth in the Series J Certificate of Designation, and except as otherwise provided by applicable law, the holders of Series J Preferred Stock (i) shall be entitled to vote with the holders of Common Stock on all matters submitted for a vote of holders of Common Stock except for a vote with respect to the election of directors and (ii) shall be entitled to one vote for each share of Common Stock such holder of Series J Preferred Stock would receive upon conversion of such share of Series J Preferred Stock into Common Stock.

Series J Certificate of Designation Liquidation Preference. In the event of the Company's liquidation, dissolution or winding up or upon a merger or acquisition of the Company by another company or person or any other change in control transaction, the holders of the Series J Preferred Stock will be entitled to a primary liquidation preference before any amounts are paid to the holders of Common Stock or any other equity securities of the Company (other than the primary liquidation preference of the Series F Preferred Stock, the primary liquidation preference of the Series G Preferred Stock and the primary liquidation preference of the Series I Preferred Stock, each of which liquidation preference shall be pari passu with the primary liquidation preference of the Series J Preferred Stock). The primary liquidation preference of the Series J Preferred Stock is equal to \$5,000 per share. In addition, the holders of the Series J Preferred Stock will be entitled to a secondary liquidation preference before any additional amounts are paid to the holders of the Common Stock or any other equity securities of the Company (other than the primary liquidation preference of the Series H Preferred Stock, the secondary liquidation preference of the Series G Preferred Stock and the secondary liquidation preference of the Series I Preferred Stock, each of which liquidation preference shall be pari passu with the secondary liquidation preference of the Series J Preferred Stock). The secondary liquidation preference of the Series J Preferred Stock is equal to \$10,000 per share. In addition, the holders of the Series J Preferred Stock shall participate with the holders of the Common Stock, Series F Preferred Stock, Series G Preferred Stock, Series H Preferred Stock and Series I Preferred Stock ratably on an as-converted basis, in the distribution of the remaining assets of the Company available for distribution.

Stockholders Agreement Board Representation. In connection with, and pursuant to, the Purchase Agreement, Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A entered into a Second Amended and Restated Stockholders Agreement, dated as of July 31, 2003, by and among the Company and certain stockholders of the Company, which was further amended and restated by a Third Amended and Restated Stockholders Agreement, dated as of March 30, 2004, by and among the Company and certain stockholders of the Company (the Stockholders Agreement), listed as Exhibit E hereto. Pursuant to the terms of Stockholders Agreement, certain investors are entitled to nominate persons to the Board of Directors of the Company, and each of the stockholders that are a party to the Stockholders Agreement agree to vote his or its shares of Common Stock to elect such persons to the Board of Directors of the Company. Oak Investment Partners IX (and its affiliates) is entitled to nominate one member to the Board of Directors of the Company and such designee on the Board of Directors is currently Edward F. Glassmeyer.

Stockholders Agreement Protective Provisions. Pursuant to the terms of the Stockholders Agreement, the Company may not, without first obtaining the approval of the holders of not less than two-thirds (2/3) of the issued and outstanding shares of Series G Preferred Stock, Series I Preferred Stock and Series J Preferred Stock, voting together as a single class, (i) designate, authorize, create, issue, sell, redeem or repurchase shares of any class or series of capital stock, (ii) declare or pay any dividends or make any distributions with respect to any outstanding equity securities, (iii) approve the merger, consolidation, dissolution or liquidation of the Company or any subsidiary, (iv) increase or decrease the number of authorized shares of Common Stock, Series F Preferred Stock or Series G Preferred Stock, (v) sell all or substantially all of the assets of the Company and its subsidiaries, (vi) cause a material change in the nature of the business or strategic direction of the Company and its subsidiaries, (vii) approve the filing for bankruptcy or any decision not to take action to prevent a filing for bankruptcy or oppose an involuntary filing for bankruptcy, (viii) approve the establishment and maintenance of an Executive Committee of the Board of Directors or increase or decrease the number of directors composing the Board of Directors or (ix) amend, repeal or modify any provision of the Company's certificate of incorporation in a manner that adversely affects the rights, powers or preferences of the Series F Preferred Stock or Series G Preferred Stock.

Stockholders Agreement Right of First Offer With Respect to Additional Issuances of Securities by the Company. Pursuant to the terms of the Stockholders Agreement, the Company is obligated to offer any additional sales or other issuances of securities of the Company first to the stockholders who are a party to the Stockholders Agreement and hold at least a certain number of shares of preferred stock of the Company as set forth in the Stockholders Agreement. As of the date hereof, Oak Investment Partners IX (and its affiliated funds) is entitled to such right to first offer.

Stockholders Agreement Right of First Refusal and Right of Participation With Respect to Stock Held by David Schaeffer. Pursuant to the terms of the Stockholders Agreement, the stockholders who are a party to the Stockholders Agreement have a right of first refusal and a right of participation with respect to certain dispositions of securities held by David Schaeffer.

Registration Rights Agreement Registration of Shares of Common Stock for Resale. In connection with, and pursuant to, the Purchase Agreement, Oak Investment Partners IX, Oak IX Affiliates Fund and Oak IX Affiliates Fund A entered into a Third Amended and Restated Registration Rights Agreement with the Company and certain other investors, dated as of July 31, 2003, which was further amended and restated by a Fourth Amended and Restated Registration Rights Agreement with the Company and certain other investors, dated as of March 30, 2004 (the Registration Rights Agreement), listed as Exhibit F hereto. Pursuant to the terms of the Registration Rights Agreement, at any time after the earlier of (i) July 31, 2006 and (ii) the date that is 6 months after the first public offering of securities of the Company after the date of the Registration Rights Agreement, the holders of more than 50% of the Common Stock issued or issuable upon the conversion of the Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock and Series J Preferred Stock (or otherwise distributed in respect of the Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock and Series J Preferred Stock) may request the Company to register the Common Stock issued or issuable upon the conversion of the Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock and Series J Preferred Stock (or otherwise distributed in respect of the Series F Preferred Stock, Series G Preferred Stock, Series I Preferred Stock and Series J Preferred Stock).

The foregoing summary of the Purchase Agreement, the Certificate of Designation, the Series I Certificate of Designation, the Series J Certificate of Designation, the Stockholders Agreement and the Registration Rights Agreement and the agreements and transactions contemplated thereby is qualified in its entirety by reference to the Purchase Agreement, the Certificate of Designation, the Series I Certificate of Designation, the Series J Certificate of Designation, the Stockholders Agreement and the Registration

Rights Agreement, listed as Exhibits C, D, G, H, E and F hereto, respectively, and incorporated herein by reference.

Except as set forth above in this statement, none of the Reporting Persons has any present plans or proposals that relate to or would result in: (i) the acquisition by any person of additional securities of the Company, or the disposition of securities of the Company; (ii) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the Company or any of its subsidiaries; (iii) a sale or transfer of a material amount of assets of the Company or any of its subsidiaries; (iv) any change in the present Board of Directors or management of the Company, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board; (v) any material change in the present capitalization or dividend policy of the Company; (vi) any other material change in the Company's business or corporate structure; (vii) changes in the Company's charter, by-laws or instruments corresponding thereto or other actions which may impede the acquisition of control of the Company by any person; (viii) causing a class of securities of the Company to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; (ix) a class of equity securities of the Company becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act; or (x) any action similar to any of those enumerated above.

Item 5. Interest in Securities of the Issuer

Item 5 is hereby amended and restated in its entirety as follows:

(a) and (b) The approximate percentages of shares of Common Stock reported as beneficially owned by the Reporting Persons is based upon 13,952,855 shares of Common Stock outstanding as of March 19, 2004, as reported in the Company's Annual Report on Form 10-K filed with the Commission on March 30, 2004, plus 68,199,901 shares of Common Stock issuable upon the conversion of the Series F Preferred Stock, 254,942,365 shares of Common Stock issuable upon conversion of the Series G Preferred Stock, 41,180,769 shares of Common Stock issuable upon the conversion of the Series H Preferred Stock, 15,962,585 shares of Common Stock issuable upon the conversion of the Series I Preferred Stock and 120,605,215 shares of Common Stock issuable upon the conversion of the Series J Preferred Stock (such numbers of Common Stock issuable upon conversion of preferred stock are as of March 30, 2004, as reported by the Company to the Reporting Persons).

In order to provide accurate disclosure with respect to the percentage of Common Stock reported as beneficially owned by each of the Reporting Persons, the percentage beneficially owned by each Reporting Person was calculated on a fully diluted, as converted basis of all of the Company's issued and outstanding Series F Preferred Stock, Series G Preferred Stock, Series H Preferred Stock, Series I Preferred Stock and Series J Preferred Stock, including shares held by third parties. In the interests of full disclosure, if such percentage for each Reporting Person was based solely on the Common Stock outstanding plus the shares of Common Stock issuable upon conversion of the Series G-1 Preferred Stock, the Series I Preferred Stock and the Series J Preferred Stock deemed to be beneficially owned by such Reporting Person, the percentages would be as follows: 86.5% for each of Oak Investment Partners IX and Oak Associates IX, 11.6% for Oak IX Affiliates Fund A, 5.6% for Oak IX Affiliates Fund, 16.0% for Oak IX Affiliates and 86.9% for Oak Management and each of the Partners.

Amounts shown as beneficially owned by each of Oak Investment Partners IX, Oak Associates IX, Oak Management, Bandel L. Carano, Edward F. Glassmeyer, Fredric W. Harman and Ann H. Lamont include (i) 1,960,884 shares of Common Stock directly owned by Oak Investment Partners IX, (ii) 56,707,616 shares of Common Stock into which the shares of Series G-1 Preferred Stock purchased by Oak Investment Partners IX may be initially converted, (iii) 1,797,892 shares of Common Stock into which the shares of Series I Preferred Stock held by Oak Investment Partners IX may be initially

converted and (iv) 16,181,034 shares of Common Stock into which the shares of Series J Preferred Stock held by Oak Investment Partners IX may be initially converted.

Amounts shown as beneficially owned by each of Oak IX Affiliates Fund, Oak IX Affiliates, Oak Management, Bandel L. Carano, Edward F. Glassmeyer, Fredric W. Harman and Ann H. Lamont include (i) 20,900 shares of Common Stock directly owned by Oak IX Affiliates Fund, (ii) 604,334 shares of Common Stock into which the shares of Series G-1 Preferred Stock purchased by Oak IX Affiliates Fund may be initially converted, (iii) 18,599 shares of Common Stock into which the shares of Series I Preferred Stock held by Oak IX Affiliates Fund may be initially converted and (iv) 185,989 shares of Common Stock into which the shares of Series J Preferred Stock held by Oak IX Affiliates Fund may be initially converted.

Amounts shown as beneficially owned by each of Oak IX Affiliates Fund A, Oak IX Affiliates, Oak Management, Bandel L. Carano, Edward F. Glassmeyer, Fredric W. Harman and Ann H. Lamont include (i) 47,066 shares of Common Stock directly owned by Oak IX Affiliates Fund A, (ii) 1,361,217 shares of Common Stock into which the shares of Series G-1 Preferred Stock purchased by Oak IX Affiliates Fund A may be initially converted, (iii) 43,397 shares of Common Stock into which the shares of Series I Preferred Stock held by Oak IX Affiliates Fund A may be initially converted and (iv) 371,978 shares of Common Stock into which the shares of Series J Preferred Stock held by Oak IX Affiliates Fund A may be initially converted.

By virtue of their potential status as a group with the stockholders of the Company that are parties to the Stockholders Agreement (which stockholders are set forth in Item 6 below) due to the voting agreement with respect to the appointment of directors set forth in the Stockholders Agreement, for purposes of Rule 13d-5, each of the Reporting Persons may be deemed to have shared voting and dispositive power over the shares owned by such stockholders. Except to the extent explicitly set forth herein, neither the filing of this statement nor any of its contents shall be deemed to constitute an admission that any Reporting Person is the beneficial owner of any Common Stock referred to in this statement for the purposes of Section 13(d) of the Securities Exchange Act of 1934 or for any other purpose, and such beneficial ownership is expressly disclaimed.

Please see Items 7, 8, 9, 10, 11, and 13 for each cover sheet for each Reporting Person.

(c) Except as set forth in Item 4 above, none of the Reporting Persons has effected any transaction in the Common Stock during the past 60 days.

(d) Except as set forth in this Item 5, no person other than each respective record owner referred to herein of securities is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Item 6 is hereby amended and restated in its entirety as follows:

Pursuant to Rule 13d-1(k) promulgated under the Exchange Act, the Reporting Persons have entered into an agreement attached hereto as Exhibit A, with respect to the joint filing of this statement and any amendment or amendments hereto.

The Purchase Agreement was entered into as of June 26, 2003. Certain terms and conditions of the Purchase Agreement and the Certificate of Designation are described in Items 3 - 5 above.

The Stockholders Agreement was entered into as of March 30, 2004 by the Company, BNP Europe Telecom & Media Fund II, LP, Natio Vie Developpement 3, FCPR, Oak Investment Partners IX, Oak IX Affiliates Fund, Oak Investment Partners Affiliates Fund A, Jerusalem Venture Partners III, L.P., Jerusalem Venture Partners III (Israel), L.P., Jerusalem Venture Partners Entrepreneurs Fund III, L.P., Jerusalem Venture Partners IV, L.P., Jerusalem Venture Partners IV (Israel), L.P., Jerusalem Venture Partners IV A, L.P., Jerusalem Venture Partners Entrepreneurs Fund IV, L.P., Worldview Technology Partners III, L.P., Worldview Technology International III, L.P., Worldview Strategic Partners III, L.P., Worldview III Carrier Fund, L.P., Worldview Technology Partners IV, L.P., Worldview Technology International IV, L.P., Worldview Strategic Partners IV, L.P., Broadview Capital Partners L.P., Broadview Capital Partners Qualified Purchaser Fund L.P., Boulder Ventures IV, L.P., Boulder Ventures IV (Annex), L.P., NAS Partners I L.L.C., Nassau Capital Partners IV, L.P., David Schaeffer and certain other stockholders party thereto. Certain terms and conditions of the Stockholders Agreement are described in Item 4 above.

The Registration Rights Agreement was entered into as of March 30, 2004. Certain terms and conditions of the Registration Rights Agreement are described in Item 4 above.

Item 7. Material to Be Filed as Exhibits

Item 7 is hereby amended and restated in its entirety as follows:

- | | |
|-----------|--|
| Exhibit A | Agreement of Reporting Persons, dated April 6, 2004, among the Reporting Persons. |
| Exhibit B | Power of Attorney dated February 7, 2003 (previously filed with the Commission on August 8, 2003). |
| Exhibit C | Participating Convertible Preferred Stock Purchase Agreement, dated as of June 26, 2003, by and among the Company and the investors named therein (filed as Exhibit 10.4 to the Company's Form 8-K filed with the Commission on August 7, 2003, and incorporated herein by reference). |
| Exhibit D | Certificate of Designations, Preferences and Rights of Series G-1 Participating Convertible Preferred Stock of the Company (filed as Exhibit 3.3 to the Company's Form 10-Q filed with the Commission on August 14, 2003, and incorporated herein by reference). |
| Exhibit E | Third Amended and Restated Stockholders Agreement, dated as of March 30, 2004, by and among the Company and the stockholders named therein (filed as Exhibit 10.1 to the Company's Form 10-K filed with the Commission on March 30, 2004, and incorporated herein by reference). |
| Exhibit F | Fourth Amended and Restated Registration Rights Agreement, dated as of March 30, 2004, by and among the Company and the stockholders named therein (filed as Exhibit 10.2 to the Company's Form 10-K filed with the Commission on March 30, 2004, and incorporated herein by reference). |
| Exhibit G | Certificate of Designations, Preferences and Rights of Series I Participating Convertible Preferred Stock of the Company (filed as Exhibit 3.5 to the Company's Form 10-K filed with the Commission on March 30, 2004, and incorporated herein by reference). |

Exhibit H Corrected Certificate of Designations, Preferences and Rights of Series J Participating Convertible Preferred Stock of the Company (filed as Exhibit 3.7 to the Company's Form 10-K filed with the Commission on March 30, 2004, and incorporated herein by reference).

Signature

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: April 6, 2004

Entities:

Oak Investment Partners IX, Limited Partnership

Oak Associates IX, LLC

Oak IX Affiliates Fund A, Limited Partnership

Oak IX Affiliates Fund, Limited Partnership

Oak IX Affiliates, LLC

Oak Management Corporation

By: /s/ Edward F. Glassmeyer

Edward F. Glassmeyer, as
General Partner or
Managing Member or as
Attorney-in-fact for the
above-listed entities

Individuals:

Bandel L. Carano

Gerald R. Gallagher

Edward F. Glassmeyer

Fredric W. Harman

Ann H. Lamont

By: /s/ Edward F. Glassmeyer
Edward F. Glassmeyer,
Individually and as
Attorney-in-fact for the
above-listed individuals

INDEX TO EXHIBITS

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