

From: David Koch dave@koch.net

Subject: URGENT: Material Omission of Federal Criminal Investigation by Cogent Communications Holdings, Inc. (NASDAQ: CCOI)

DK

Date: April 15, 2025 at 7:11 PM

To: nasdaqmarketwatch@nasdaq.com

Cc: listingapplications@nasdaq.com

Bcc: 56hcok@gmail.com, Dave Koch dave@koch.org

Dear NASDAQ MarketWatch,

This is a formal notice concerning Cogent Communications Holdings, Inc. (Ticker: CCOI) and its recently closed \$174.4 million IPv4 securitization transaction, finalized on April 11, 2025.

As of April 14, 2025, forensic server logs confirm that Wilmington Trust, N.A.—Indenture Trustee for the transaction—accessed email correspondence and legal disclosures referencing multiple federal criminal investigations into Cogent, only after the deal was executed and filed with the SEC. There is no evidence Wilmington Trust had reviewed these materials before signing, raising the possibility that material information was withheld from the Indenture Trustee and public markets.

Key Facts:

- Between March 14 and March 19, 2025, I sent four formal legal notices to Cogent outlining:
 - A 22-year criminal conspiracy stemming from Cogent’s 2003 acquisition of Fiber Network Solutions, Inc. (FNSI), and a full reset of the statute of limitations to February and March 2025—in accordance with federal precedent established under *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997), and *United States v. Smith*, 740 F.2d 734 (9th Cir. 1984), which confirm that ongoing acts of concealment and obstruction reset the statute of limitations in civil RICO and criminal fraud matters.
 - Ongoing investigations by the DOJ, SEC, FINRA, IRS-CI, and FAA.
 - Cogent’s Chief Legal Officer acknowledged receipt of these notices in writing.
 - Cogent failed to disclose any of these risks in its April 4, 2025 Offering Memorandum or in SEC filings.
 - Wilmington Trust accessed the correspondence on April 14, 2025—three days after closing—via Microsoft Azure IP infrastructure (ASN 8075) linked to their own domain operations.
 - The accessed documents were not the full 137-page whistleblower report (which has only been shared with federal regulators and law enforcement), but rather:
 - A March 21, 2025 PDF file summarizing the legal notices and linking to the criminal investigation disclosures.
 - A memo to Cogent’s Board of Directors dated April 5, 2025.
 - Wilmington Trust signed the Indenture Supplement without having reviewed these materials.

Direct links to the accessed documents:

- Consolidated legal notice to Cogent:

https://fibernetworksolutions.net/ewExternalFiles/20250321_Email_Cogent_Koch.pdf

- Memo to Cogent’s Board of Directors (April 5, 2025):

<https://fibernetworksolutions.net/ewExternalFiles/MEMO%20TO%20COGENT%20BOARD.pdf>

Related Public Disclosures:

- April 14, 2025 News Release – “Cogent Closes \$174M Transaction Despite Active Whistleblower Investigations”

https://fibernetworksolutions.net/ewExternalFiles/News_Release20250414_174MCOGENT_DEAL_CLOSES.pdf

- April 15, 2025 News Release – “Wilmington Trust Accessed Whistleblower Disclosure Only After Finalizing Cogent Deal”

https://fibernetworksolutions.net/ewExternalFiles/News_Release_Wilmington_Trust_20250415.pdf

Applicable NASDAQ Listing Rule Violations:

- Rule 5250(b)(1): Failure to disclose material information
- IM-5250-1: Nondisclosure of investigations
- Rule 5605(c): Audit committee responsibilities
- Rule 5101: Conduct inconsistent with public interest and market integrity

Request for Immediate Action:

Given the evidence presented, I respectfully urge NASDAQ to:

1. Initiate a Listing Qualifications investigation into Cogent Communications Holdings, Inc.
2. Review whether the company’s conduct warrants trading suspension or delisting proceedings.
3. Coordinate with the SEC Division of Enforcement if further disclosures or enforcement action is appropriate.

This complaint supplements earlier submissions made to the following agencies:

- FINRA (Ref: #30636f79ca93 and #b1eda2ee4e4d)
- SEC Office of the Whistleblower (Ref: TCR #2025-0646-7493-3893)
- DOJ Public Integrity Division (Submitted April 15, 2025)
- IRS Criminal Investigations
- FAA Safety Division – (Reference number: AAE-EHL-20250410-889)

- FBI (Public Corruption Unit)

All legal notices, forensic logs, access metadata, and copies of original correspondence are archived and available to NASDAQ upon request.

Please contact me directly with any questions or document requests.

Sincerely,
/s/
David J. Koch

Whistleblower

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