



MEMORANDUM

TO: Board of Directors, Cogent Communications Holdings, Inc.
FROM: David J. Koch, Whistleblower
DATE: April 5, 2025

SUBJECT: IMMINENT DENIAL OF D&O INSURANCE COVERAGE
– CRIMINAL EXPOSURE RISK

Ladies and Gentlemen,

This memo is provided as a formal courtesy and final warning. Based on publicly disclosed facts—documented in press releases dated March 24 and March 28, 2025, and now expanded in the April 5, 2025 release—each of you faces imminent risk of losing indemnity protection under your Directors and Officers (D&O) liability insurance policies.

SECTION I – ACTIVATION OF STANDARD D&O EXCLUSIONS

Multiple federal whistleblower filings and documented evidence have triggered standard exclusions found in virtually all D&O policies:

- **FRAUD EXCLUSION:** Denies coverage for intentional acts of fraud, concealment, or dishonesty.
- **WILLFUL MISCONDUCT EXCLUSION:** Denies coverage for knowingly unlawful behavior.
- **IMPROPER PERSONAL PROFIT EXCLUSION:** Voids coverage for profits or compensation received illegally or without entitlement.

- **PRIOR KNOWLEDGE/PRIOR ACTS EXCLUSION:** Denies claims arising from conduct that pre-dates the policy period or should have been disclosed during underwriting.

SECTION II – DIRECT APPLICATION TO COGENT BOARD CONDUCT

The following actions—now substantiated through documents, audio, logs, and corroborated testimony—fall squarely within these exclusions:

- The fraudulent 2003 acquisition of Fiber Network Solutions, Inc. (FNSI), including concealment of involvement and undisclosed stock option improprieties.
- The failure to disclose whistleblower filings to the SEC, FBI, and IRS-CI, dating back to December 2023.
- Referring the whistleblower back to the original conspirators, after receiving documented criminal allegations.
- Verified cyberattacks against whistleblower-operated infrastructure, corroborated by Cloudflare threat reports and IP logs.
- Receipt of formal settlement demands accompanied by authenticated evidence of ongoing criminal conduct—ignored or dismissed with legal review.

SECTION III – PERSONAL RISK TO YOU AS DIRECTORS

Should federal or civil adjudication determine wrongdoing:

- Your insurer may seek recovery of any defense costs already paid.
- If your D&O application omitted material facts or pending investigations, your policy may be rescinded ab initio—rendering it void from inception.
- Indemnification from Cogent cannot be presumed. Derivative litigation, initiated by whistleblower disclosures, is now inevitable.

SUGGESTED ACTIONS:

- Do not rely on corporate indemnity. You are personally exposed.
- Engage independent legal counsel immediately.
- Demand access to all board records, internal legal memos, and communications related to FNSI, Kyle Bacon, and the March 2024 inquiry.

CONCLUSION

Cogent's silence in the face of documented criminal conduct has now escalated beyond reputational risk. You are no longer shielded. You are now individually exposed. And you may soon be receiving subpoenas or indictment notices—not as directors, but as defendants.

Board of Directors
Cogent Communications Holdings, Inc.
April 5, 2025
Page 4 of 4

This memorandum is submitted pursuant to federal whistleblower protections under the Sarbanes-Oxley Act, Dodd-Frank Act, and other applicable statutes.

I do not intend to warn you twice.

Respectfully,

A handwritten signature in blue ink that reads "David Koch".

David J. Koch

Co-Founder, Fiber Network Solutions, Inc.
Federal Whistleblower – SEC, FBI, DOJ, and IRS-CI

Enclosure: April 5, 2025 News Release