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May 11, 2006

VIA FEDERAL EXPRESS

Mr. Jeff Cohan
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Network General Central Corporation—Application for No-Action Relief Under Section 12(h) of the Securities Exchange Act of 1934, as amended

Ladies and Gentlemen:

On behalf of Network General Central Corporation, a Delaware corporation¹ (“Network General” or the “Company”), we hereby apply for an exemption pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) from the registration requirements of Section 12(g) of the Exchange Act or request that the Office of Chief Counsel Division of Corporation Finance (the “Division”) provide its assurance pursuant to a no-action letter that it will not raise any objection if the Company does not comply with the registration requirements of Section 12(g) of the Exchange Act, with respect to options granted, and to be granted, to the Company’s employees, directors, and consultants and the employees, directors, and consultants of the Company’s subsidiaries, under its 2004 Stock Incentive Plan (the “Plan”). As explained in more detail below, this letter replaces in its entirety the letters submitted to the Division by the Company’s predecessor, the Network General Holdings Corporation, a Delaware corporation (the “Predecessor Company”), and the letter submitted to the Division by the Company dated April 20, 2006, that addressed the same topic.

¹ As explained in detail below, effective as of January 31, 2006, Network General Holdings Corporation, a Delaware corporation (the “Predecessor Company”), was merged with and into the Company in order to simplify the corporate structure. As a result of the merger, the Company assumed the Predecessor Company’s 2004 Stock Incentive Plan (the “Plan”) and all outstanding stock options issued thereunder.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 2

Securities Exchange Act
of 1934 – Section 12(h)

BACKGROUND

The Company

The Predecessor Company was formed on July 7, 2004, for the purpose of holding the shares of the Company, which holds the shares of Network General Corporation. Network General Corporation is engaged in the business of developing and providing solutions for network and application performance management. Network General Corporation has approximately 630 employees and has operations and employees in the following 17 countries: Australia, Canada, China, France, Germany, Hong Kong, India, Japan, Korea, Malaysia, Mexico, the Netherlands, Singapore, Spain, Switzerland, United Kingdom and the United States. Its international operations consist primarily of sales and support teams in these countries and a research and development center in India. Effective as of January 31, 2006 (the “Merger Date”), the Predecessor Company was merged with and into the Company (the “Merger”) in order to simplify its corporate structure. As a result of the Merger, the Company assumed the Plan and all outstanding stock options issued under the Plan by the Predecessor Company.

The Company’s authorized capital consists of 130,000,000 shares of common stock, par value \$0.01 per share, and 2,500,000 shares of preferred stock, par value \$0.01 per share. As of May 11, 2006, the Company had a total of 90,667,726 shares of common stock and 997,478 shares of preferred stock issued and outstanding. As of May 11, 2006, the Company’s outstanding common stock was held by 30 shareholders and its outstanding preferred stock was held by eleven shareholders. During the period commencing on December 23, 2005, and ending as of the date hereof, six individuals who were issued options under the Plan by the Predecessor Company exercised such options, and two individuals who were issued options under the International Plan (described below) by the Predecessor Company exercised such options. As of January 31, 2006, at the moment immediately prior to the consummation of the Merger, there were 453 holders of options issued by the Predecessor Company under the Plan, and there were 209 holders of options issued by the Predecessor Company under the International Plan. Each of the 453 optionholders under the Plan and each of the 209 optionholders under the International Plan were employees, directors, or consultants of the Predecessor Company or employees, directors, or consultants of the Predecessor Company’s subsidiaries.² As of the date hereof, there are 431 holders of options issued under the Plan, and there are 202 holders of options issued under the International Plan. As of the date hereof, and at all times prior to the date hereof, neither the Predecessor Company nor the Company had at any point in time issued options to more than 500 holders under the Plan or under the International Plan.

Holders of the preferred stock of the Company have priority over the holders of the Company’s common stock to receive payments in the event of dividends or liquidation or dissolution of the Company. Upon an initial public offering or change of control of the Company, the Company will be required to redeem all of the outstanding preferred stock for a redemption price equal to the

² As used herein, references to a “subsidiary” refer to an issuer’s majority owned subsidiary as described in Rule 701(c) of the Rules promulgated under the Securities Act of 1933, as amended.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 3

Securities Exchange Act
of 1934 – Section 12(h)

liquidation preference of such shares plus all accrued and unpaid dividends. Holders of the common stock have no such redemption rights. Holders of the preferred stock will have no voting rights, whereas holders of the common stock will be entitled to vote. In light of these substantial differences in their respective rights and powers when compared to options granted under the Plan, we are of the opinion that the common stock and preferred stock are not part of the same class of securities as options granted under the Plan. Accordingly, the scope of relief we are requesting on behalf of Network General does not include the common stock or preferred stock.

The Company currently has total assets substantially in excess of ten million dollars (\$10,000,000) in value and expects to continue to possess total assets well in excess of that amount for the foreseeable future.

No class of the Company's equity securities are traded or quoted on a national stock exchange, automated trading system, or similar trading market and the Company is not subject to the periodic reporting requirements of Section 13 and 15(d) of the Exchange Act.

The Company has expressed its intention to become a public company within the next several years, although no specific dates have been set and the Company has not contractually committed to ever becoming a public company.

The Plan

Employees, directors, and consultants of the Company³ and its subsidiaries located in the United States are eligible to participate in the Plan. The stockholders of the Company approved the Company's assumption of the Plan and all options issued under the Plan to 453 optionholders as of the date of the Merger. The stockholders of the Company also approved the issuance of not more than 14,602,375 shares of Company common stock under the Plan in compensatory circumstances only. Although as of the date hereof, and at all times prior to the date hereof, there were fewer than 500 holders of options issued under the Plan, the Company intends to grant additional options under the Plan such that the Company expects that the number of holders of options issued under the Plan will equal or exceed 500 in the near future.

The terms of the Plan permit options to be granted to individuals who serve as consultants to the Company or its subsidiaries. The Company hereby confirms that any consultants who participate in the Plan are limited to those consultants who satisfy the definition of "consultants or advisors" set forth in Rule 701(c)(1) under the Securities Act of 1933, as amended (the "Securities Act"), and therefore stock awards to these individuals are compensatory in nature and eligible for the exemption from the registration requirements set forth under Section 5 of the Securities Act provided by Rule 701. Each stock option granted to any participant under the Plan would be compensatory in nature and eligible for the exemption from the registration requirements set forth under Section 5 of the

³ Unless otherwise noted, the representations made by the Company also were accurate with respect to the Predecessor Company prior to the consummation of the Merger.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 4

Securities Exchange Act
of 1934 – Section 12(h)

Securities Act provided by Rule 701.

The intent of the Plan is to aid the Company in attracting, motivating, and retaining service providers of outstanding ability who are located in the United States, by offering such service providers an opportunity to receive grants of Company stock-based awards, thereby increasing their personal interest in the growth and success of the Company. Unless the Board of Directors of the Company (the “Board”) terminates the Plan at an earlier date, the Plan terminates ten years from the date of its adoption.

The Plan is administered by an administrative committee (the “Committee”) that has been appointed by the Board. The Committee has the discretion to determine which eligible persons receive options. The Plan authorizes the Committee to grant both “incentive stock options” as defined under the Internal Revenue Code of 1986, as amended (the “Code”), and “nonstatutory stock options.” The Plan also authorizes the Committee to grant to eligible participants other Company stock-based awards, including stock bonuses, restricted stock purchase awards, stock appreciation rights, phantom stock units, restricted stock units, performance share bonuses, and performance share units. In addition to the options granted under the Plan, the Predecessor Company issued one restricted stock purchase award under the Plan, which was assumed by the Company as a result of the Merger. Although the Plan permits the issuance of stock awards other than options as indicated above, the Company represents that it will not issue any award other than options under the Plan so long as the Company is relying on the relief granted in response to this request.

As a result of the Merger, the Company also assumed a separate equity compensation plan established by the Predecessor Company exclusively for its non-U.S.-based employees (“International Plan”) and all outstanding options issued by the Predecessor Company under the International Plan. The Company intends to continue granting options under the International Plan. The Company believes that a separate International Plan provides the Company with greater flexibility in responding to substantially varied regulatory schemes, local labor market conditions, and differing attitudes towards the role of stock compensation in the many different parts of the world in which the Company operates. There are a number of significant differences between the Plan and the International Plan. The term of the International Plan is limited to five years while the term of the Plan is ten years. In distinction from the Plan, the types of stock awards available under the International Plan are limited to only nonstatutory options, restricted stock, and stock appreciation rights. Stock option grants under the International Plan are available only for employees, directors and consultants of the Company who are based outside of the United States of America (including its possessions and territories). Because the options granted under the International Plan will be subject to a number of material terms that are substantially different from those governing the options granted under the Plan, in addition to the material differences listed above, we are of the opinion that the options granted under the Plan are a separate class of equity security for purposes of Section 12(g) of the Exchange Act, as discussed in further detail below.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 5

Securities Exchange Act
of 1934 – Section 12(h)

Summary of the Options

The Plan grants the Committee discretion to determine the specific terms of each option granted within the range of terms permitted under the Plan. Each option is documented by an individual share option agreement between the Company and the optionholder and a share option grant notice, stating the terms and conditions thereof, including number of shares of common stock subject to the option grant, the exercise price, the option term, vesting provisions and restrictions on transfer.

The following is a summary of the material terms of the Plan and the standard forms of option agreement currently used by the Committee.

1. The number of shares of common stock subject to each option is determined by the Committee at the time the option is granted.
2. The exercise price for each share of common stock subject to an option is determined by the Committee at the time of grant. The exercise price for an incentive stock option shall not be less than 100% of the fair market value per share of common stock on the date of grant; the exercise price for a nonstatutory stock option shall not be less than 85% of the fair market value per share of common stock on the date of grant. However, if the recipient of an option is a 10% shareholder, then the option price per share shall not be less than 110% of the fair market value on the date of grant. So long as there is not a public market for the common stock, the fair market value is the fair market value per share established by the Board in good faith. The exercise price will be paid at the time of exercise in cash or by check, or at the discretion of the Board, may be paid by: (a) delivery of other shares of Company common stock held by the optionholder, (b) according to a form of deferred payment arrangement, or (c) in any other form of legal consideration acceptable to the Board. The standard form of option agreement provides for payment exclusively by cash or check. No loans or extensions of credit will be provided to the Company's "Executive Officers" (as such term is used under the Sarbanes-Oxley Act of 2002), any member of the Board, or to any other person pursuant to the terms of the Plan in violation of the Sarbanes-Oxley Act of 2002.
3. The options generally have a term of seven years, subject to earlier termination if certain events occur, as discussed below.
4. While the Committee has significant discretion in determining the vesting terms for each option grant, the Committee currently grants options with one of the following two alternative vesting schedules. Options vest as to 20% of the shares subject thereto on the first anniversary of the vesting commencement date, and vest as to an additional 20% of the shares subject thereto annually thereafter (in equal quarterly installments) over the next four years; alternatively, options vest as to 25% of the shares subject thereto on the first anniversary of the vesting commencement date, and vest as to an additional 25% of the shares subject thereto annually thereafter (in equal quarterly installments) over the next three years, in each case

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 6

Securities Exchange Act
of 1934 – Section 12(h)

dependent on the performance of continued service for the Company and/or its subsidiaries by the optionholder.

5. To the extent that an option is vested, it will generally become exercisable upon vesting⁴ until the earliest to occur of the following dates:
 - (a) the seventh anniversary of the Date of Grant;
 - (b) in the event of the optionholder's termination of employment for any reason other than death or disability or cause, three months following such termination (or a longer or shorter period of time as provided in the optionholder's option agreement, but if the option was granted at a time when no public market for the common stock existed, this period cannot be less than 30 days);
 - (c) in the event of the optionholder's termination of employment due to the optionholder's disability, twelve months following such termination (or a longer or shorter period of time as provided in the optionholder's option agreement, but if the option was granted at a time when no public market for the common stock existed, this period cannot be less than six months);
 - (d) in the event of the optionholder's termination of employment due to the optionholder's death, twelve⁵ months following such termination of employment; and
 - (e) in the event of the optionholder's termination of employment for cause, immediately upon the occurrence of such termination.
6. The obligation of the Company to issue common stock upon exercise of options granted under the Plan is subject to all applicable laws, rules and regulations and such approvals by any governmental agencies as may be required, including, without limitation, the effectiveness of any registration statement required under the Securities Act.
7. In the event of a change in control of the ownership of the Company in which the option is not to be assumed or replaced with a substitute option which substantially preserves the

⁴ Early exercise may be permitted for executives who are granted options under the Plan. However, those shares that the executive receives upon early exercise that have not yet vested upon the executive's termination will be subject to a repurchase option in favor of the Company for 90 days following such termination. As stated below, the Company undertakes that so long as it is relying on the no-action relief granted pursuant to this request, it will repurchase all unvested shares upon termination of employment within the time period so indicated.

⁵ As initially adopted, the Plan provided that in the event of the optionholder's termination of employment due to the optionholder's death, options could be exercised for a period of 18 months following termination of employment. Subsequently, however, the Predecessor Company unilaterally amended the Plan and each previously issued option to reduce the 18 month period to 12 months before such provision was utilized with respect to any option issued under the Plan.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 7

Securities Exchange Act
of 1934 – Section 12(h)

economic value of the option as in effect immediately prior to the change in control or is not otherwise to be continued in effect by the Company or any successor entity in the change of control, then the Board has discretion to provide for: (a) payment in exchange for the cancellation of an option; (b) continuation of any options outstanding under the plan; or (c) termination of an option upon the consummation of the change of control, but only if the participant has been permitted to exercise an option prior to the change of control. Furthermore, at any time the board may provide for the acceleration of exercisability and/or vesting of an option.

8. Upon an optionholder's termination of employment, any options that have not yet vested on the date the optionholder's employment ends will be cancelled by the Company.
9. The holders of options granted under the Plan will have no voting or other rights as shareholders of the Company prior to exercise of the options.
10. Options granted under the Plan are not transferable other than by will or by the laws of descent and distribution, unless otherwise permitted by the Committee under the limited circumstances described below. The Company undertakes that it will not permit the transfer of options during the lifetime of the holder of an option by such holder other than by gift to family members as defined under Rule 701 or pursuant to the terms of a domestic relations order, and no transferee shall be permitted to make a subsequent transfer (except back to the transferor or to the Company) so long as the Company is relying on the relief granted in response to this request. The Company hereby confirms that as of this date, the Committee has not granted any options under the Plan with terms which are different than those described in this paragraph and will not grant any options under the Plan in the future with terms which are different than those described in this paragraph so long as the Company is relying on the relief granted in response to this request.
11. There will be no market or periodically available process or methodology that would allow holders of options granted under the Plan to receive any consideration or compensation for these options prior to the time of exercise.
12. The Board may amend, suspend, or terminate the Plan at any time; however, except for certain adjustments upon changes in the common stock, no amendment will be effective unless approved by the shareholders to the extent necessary to comply with applicable law. No amendment may materially impair any of the rights of a participant under any awards previously granted, without his or her written consent.

Options granted under the Plan differ in a number of material respects from options granted under the International Plan. Not only do the Plan and the International Plan differ with respect to term, available types of stock awards, and eligibility, the terms and conditions of the options granted under the Plan and the International Plan possess the following material distinctions. (1) While the Plan

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 8

Securities Exchange Act
of 1934 – Section 12(h)

permits only executive optionholders to exercise their options before they have vested (often referred to as “early exercise”), the International Plan does not permit early exercise for any optionholder. (2) The International Plan does not permit the inter vivos transfer of stock options under any circumstances, even to family members as defined under Rule 701 or upon a marital dissolution. (3) The standard vesting schedule for virtually all grants under the International Plan will be 25% after the first anniversary of the date vesting commences, with the remainder vesting over the following three years of service, while most options granted under the Plan will vest over five years (a vesting schedule that is 25% longer in duration). (4) Options granted under the International Plan expire under most circumstances 60 days following the optionholder’s termination of service rather than 90 days, as is the case for options granted under the Plan (only two-thirds of the post-termination duration). (5) The maximum term for options granted pursuant to the International Plan is almost 43% longer than the maximum term for options granted under the Plan; specifically, the maximum term for options under the Plan will be seven years, while the term of options granted pursuant to the International Plan will be ten years. (6) The International Plan will have different guidelines from those for the Plan for some international employees when determining the size of their grants, reflecting the different base salary and total compensation levels in the various parts of the world in which the Company operates as well as the differing level of importance placed on equity compensation in many countries outside of the United States. For example, when granting options to employees in India (approximately 50% of the employees of the Company outside of the United States are located in India) under the current grant guidelines, the relative number of shares to be granted when compared to an employee in the United States performing comparable services will generally be approximately 20%. (7) Finally, further variations in the terms of certain option grants will be made to the extent required by the laws of the foreign jurisdiction in which the optionholder lives and works.

We identified three previously issued no-action letters that concluded that compensatory stock options possessing different terms were separate classes of equity securities for purposes of Section 12(g) of the Exchange Act. These letters are: *General Roofing Services, Inc.* (April 13, 2000), *Kinkos, Inc.* (November 30, 1999), and *Starbucks Corporation* (April 2, 1992) (collectively, the “No-Action Letter Precedents”). In each of the No-Action Letter Precedents, under the circumstances described below, the Commission staff elected not to take enforcement action with respect to applicants’ counsel’s opinion that the options granted pursuant to the applicants’ respective plans or arrangements constituted separate classes of equity securities and therefore such options should be distinguished for purposes of the Section 12(g) analysis. Thus, the Commission limited the scope of its exemptive relief to one specific class of options and did not include the other classes of compensatory options granted by the relevant issuer within the relief.

In *General Roofing Services*, the applicant sponsored two programs, the Stock Option Plan and a program of option grants to executive officers outside of the Stock Option Plan. The applicant cited the following distinctions between the two programs in order to argue that the options granted pursuant to each program were separate classes of securities: eligibility, exercisability, transferability, timing and amount of grants, and forfeiture. The five (5) material differences were as follows:

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 9

Securities Exchange Act
of 1934 – Section 12(h)

(1) Eligibility: The plan covered all employees and directors while the program was limited to executive officers. (2) Exercisability: Options under the plan were exercisable only upon the seventh anniversary of grant or six months after a public offering; options under the program were also exercisable thirty days following termination of the company's chief executive officer. (3) Transferability: Options under the plan were not transferable under any circumstances while options granted under the program were transferable by will or laws of descent and distribution. (4) Timing and Amount of Grants: Grants under the plan were in relatively small amounts and made on a continuing periodic basis. Grants under the program were made in connection with the closing of the transaction by which the company was founded. (5) Forfeiture: Options under the plan were forfeited if holder died or terminated on account of disability while program options were not.

In *Kinko's*, the applicant sponsored the Co-Worker Stock Incentive Plan and the Executive Option Plan. In arguing that the options granted under the Co-Worker Stock Incentive Plan were a separate class of securities from the options granted under the Executive Option Plan, the applicant noted the following differences between the plans: eligibility, exercisability, transferability, and repurchase rights. The four (4) material differences were as follows: (1) Eligibility: The worker plan covered all employees while the executive plan covered executive officers and key management only. (2) Exercisability: Options granted under the worker plan were exercisable upon completing three years of service or achieving company performance targets, and then only three months after a public offering, the eighth anniversary of grant date, or upon a change of control in the ownership of the company. Options granted under the executive plan became exercisable just upon completion of a certain period of service or upon achievement of performance objectives. (3) Transferability: Worker plan options were not transferable under any circumstances while executive plan options provided for more flexible transferability terms (not specified in the submission letter). (4) Repurchase Rights: Worker options contained repurchase rights in favor of the company while executive options did not.

In *Starbucks*, the applicant sponsored the Key Employee Option Plan, the Director Option Plan, and the Company-Wide Option Plan. In requesting no-action relief from the Section 12(g) requirements, the applicant identified the following differences in plan terms: eligibility, vesting and exercisability, post-termination exercise period, amount of grant, and post-death exercise period. The four (4) material differences were as follows: (1) Eligibility: The company-wide plan covered all employees while the other plans covered either only a very small number of selected persons (predominately executives) or non-employee directors. (2) Exercisability: Options under the companywide plan became exercisable only in connection with a change of control. Options for directors were immediately exercisable in full upon grant. Key employee options became exercisable over a five-year service period subject to the completion of a public offering by the company. (3) Post-Termination Exercise Period: Options granted under the companywide plan and the key employee plan generally expired 90 days following termination of service (12 months in the event of death) while for directors the period was only 30 days (180 days in the event of death). (4) Amount of Grant: The issuer asserted in its submission letter that the grant guidelines for each plan differed. However, the only specifics provided were with respect to the key employee plan, for which the size of the grant was dependent on the grantee's base salary and company profitability.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 10

Securities Exchange Act
of 1934 – Section 12(h)

In all three No-Action Letter Precedents, the Commission staff granted no-action relief from the requirements of Section 12(g) of the Exchange Act. In the case of the Company's options, there are at least nine (9) categories of differences between the options granted under the Plan and the options granted under the International Plan. Those differences are: (1) eligibility, (2) exercisability, (3) vesting schedules, (4) amount of grant, (5) repurchase rights, (6) transferability, (7) option term, (8) plan term, and (9) post-termination exercise period. These differences have been described in greater detail elsewhere in this letter. These differences are more numerous than, and in the aggregate more substantial than, the distinctions between the different classes of options cited in the No-Action Letter Precedents.

Therefore, based on the differences between options granted under the Plan and options granted under the International Plan in light of the prior authorities discussed, it is our opinion that the options granted under the International Plan are a separate and distinct class of equity security for purposes of Section 12(g) of the Exchange Act. Accordingly, the Company is not seeking relief for options granted under the International Plan.

The Staff may rely upon the summary descriptions of the terms of the Plan and the agreements evidencing the options granted thereunder which are contained in this letter. In reviewing this letter, the Division may assume that all material terms of the Plan and the agreements evidencing the options granted thereunder are set forth in the body of this letter. In addition, we have attached copies of the Plan and standard form of option agreement.

The Company undertakes that it will not amend any term of the restrictive provisions of the Plan or the International Plan described in this letter so long as the Company is relying on the relief granted in response to this request.

DISCUSSION

The Company's grant of options, both presently and in the future, under both the Plan and the International Plan, are compensatory in nature. Each option previously granted under the Plan was issued to an individual who would qualify to receive options in a transaction exempt from the registration requirements of the Securities Act pursuant to Rule 701(c) of the rules promulgated under the Securities Act. In some cases, however, options granted prior to the date hereof were exempt from the registration requirements of the Securities Act by reliance on Section 4(2) of the Securities Act. Any option previously granted that was not exempt from the registration requirements of the Securities Act under Section 4(2) of the Securities Act, was issued in compliance with Rule 701. The Company undertakes that it will not grant any options to any person other than an individual who would qualify to receive options in a transaction exempt from the registration requirements of the Securities Act pursuant to Rule 701(c) for so long as the Company is relying on the relief granted in response to this request. In addition, for so long as the Company is relying on the relief granted in response to this request, any options granted under the Plan will be exempt from the registration requirements of the Securities Act pursuant to (i) Rule 701(c) of the rules

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 11

Securities Exchange Act
of 1934 – Section 12(h)

promulgated under the Securities Act, or (ii) Section 4(2) of the Securities Act.

Although it is our opinion that the grant of options under the Plan is not required to be registered under the Securities Act, it is possible that if 500 or more persons hold options for the Company's common stock, the Company might be required to register the options under Section 12(g) of the Exchange Act, unless exemptive or no-action relief from this requirement is granted under Section 12(h) of the Exchange Act.

Exchange Act Registration Requirements

As a general rule, Section 12(g) of the Exchange Act requires every issuer meeting the jurisdictional requirements of the Exchange Act, having total assets of more than \$1 million and a class of equity security (other than an exempted security) held of record by 500 or more persons, to register the security under the Exchange Act. Pursuant to its authority under Section 12(h), the Commission has promulgated Rule 12g-1, which exempts from the registration requirement of Section 12(g) any issuer whose total assets on the last day of its most recent fiscal year did not exceed \$10 million. Issuers are required to comply with the registration requirements within 120 days after the last day of its first fiscal year when it first meets the total asset and record holder tests.

Section 12(g) was added to the Exchange Act by Section 3(c) of the Securities Acts Amendments of 1964, Pub. L. 88-467; 78 Stat. 565 (the "1964 Amendments"). Prior to the 1964 Amendments, the only securities required to be registered under the Exchange Act were those listed on a national securities exchange.

The purpose of Section 3(c) of the 1964 Amendments has been expressed in various ways:

- (a) The preamble to the legislation states that its purpose was "to extend disclosure requirements to the issuers of additional publicly traded securities." (Emphasis added.)
- (b) A report of the House Committee on Interstate and Foreign Commerce accompanying H.R. 6793, the version of the bill introduced in the House of Representatives, states that "Section 3(c) of the bill would...provide for registration of securities traded in the over-the-counter market and for disclosure by issuers thereof comparable to the registration and disclosures required in connection with listed securities." H.R. 6793, U.S. Code Cong. and Admin. News, 88th Cong. 2d Sess., at pages 3027-3028. (Emphasis added.)
- (c) A release of the Commission, citing a report on its study that made the legislative recommendations on the basis of which the 1964 Amendments were enacted, describes the scope of the registration and reporting provisions of the Exchange Act as extending "to all issuers presumed to be the subject of active investor interest in the over-the-counter market." Exchange Act Release No. 18189, October 20, 1981 (citing Report of the Special Study of Securities Markets of the Securities and Exchange Commission, House Committee on

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 12

Securities Exchange Act
of 1934 – Section 12(h)

Interstate and Foreign Commerce, H.R. Doc. No. 95, pt. 2, 88th Cong. 1st Sess. (1963) at pages 60-62). (Emphasis added.)

- (d) A later release of the Commission states that the numerical thresholds contained in Section 12(g) were selected because it was believed “that issuers in these categories had sufficiently active trading markets and public interest and consequently were in need of mandatory disclosure to ensure the protection of investors.” Exchange Act Release No. 23407, July 8, 1986. (Emphasis added.)

All of the above authorities strongly suggest that it was not the intent of Congress to require Exchange Act registration by an issuer that did not have “publicly traded securities” or “securities traded in the over-the-counter market,” and that was not the subject of “active investor interest in the over-the-counter market,” or “active trading markets and public interest.”

Authority of Commission to Grant Relief

Section 12(h) of the Exchange Act authorizes the Commission, upon application of an interested party, to exempt an issuer from Section 12(g) “if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and the extent of the activities of the issuer, income or assets of the issuer or otherwise, that such action is not inconsistent with the public interest or the protection of investors.”

Appropriateness of Exemption or Other Relief

Section 3(a)(11) of the Exchange Act defines “equity security” to include not only “any stock or similar security,” but also “any warrant or right to subscribe to or purchase a security.” As a result, it is possible that options to acquire shares of the Company’s common stock would be deemed to be a class of equity security such that if 500 or more persons were to hold the options, the Company would become subject to the registration requirements of Section 12(g) of the Exchange Act, unless an exemption or other relief from the registration requirements of Section 12(g) is granted to the Company.

Assuming that the Company will become subject to the registration requirements of Section 12(g) in the future if 500 or more persons hold options for its common stock, there would still be no public investors in the Company’s common stock and neither the common stock nor the options would be publicly traded. The history of the 1964 Amendments makes clear that Congress did not intend Section 12(g) to require the Company to register under these circumstances. Accordingly, the Company believes and it is our opinion that it would be appropriate for the Commission to grant an exemption or for the Division to grant no-action relief from the registration requirements of Section 12(g) with respect to options granted under the Plan.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 13

Securities Exchange Act
of 1934 – Section 12(h)

Number of Public Investors

Section 12(h) specifies a number of factors to be taken into account by the Commission in reviewing an application for an exemption. The first of these is the number of public investors in the issuer. As indicated above, the Company currently has no public investors who are holders of its common stock or its preferred stock. Furthermore, since any holders of options granted under the Plan have been granted such options without cash or other tangible consideration, the holders of those options cannot reasonably be considered investors in the Company. Indeed, the first time that these holders will have the opportunity to become investors in the Company is when and if the options become exercisable and they acquire common stock of the Company. As a result, it is our opinion that it can fairly be said that the holders of options granted under the Plan are not public investors in the Company.

The options under the Plan generally become exercisable upon vesting, with the exception of executive optionholders, for whom early exercise may be permitted. In addition, because of the lack of a public market for the Company's common stock, the Company expects that relatively few optionholders who may acquire the contractual ability to exercise all or a portion of their option will in fact choose to exercise until there is a public market for the Company's common stock or another opportunity to sell or exchange the common stock for cash or marketable securities becomes generally available (such as an acquisition in which the acquiror pays cash for all outstanding shares).

Furthermore, prior to the time that a public market exists for the Company's common stock, the Company undertakes that it will not permit an optionholder who has exercised his or her option to complete a transfer without value of any common stock except upon the holder's death, by gift to a family member within the meaning of Rule 701, or pursuant to the terms of a domestic relations order. The Company confirms that it possesses the authority under the terms of the Plan and the agreements evidencing the options granted thereunder to limit the transfer without value of any common stock to those circumstances listed in the preceding sentence. Given these restrictions, the Company's common stock subject to options cannot be resold or otherwise transferred to the public.

Trading Interest

The second factor listed in Section 12(h) is the level of trading interest in a company's equity securities. The Plan has been structured to preclude trading of the options. The options granted or to be granted under the Plan are not transferable, other than by will or by the laws of descent and distribution in the event of an optionholder's death, pursuant to the terms of a domestic relations order, or on a limited basis for the benefit of family members. Transfers made in contravention to the Plan are deemed void thereunder. As a result, there will be no opportunity for any transfer of all or part of an option to take place prior to the occurrence of one of the events listed above, and these events are sufficiently infrequent and unpredictable in nature that no trading interest in the options as a class of equity security will be created as a result.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 14

Securities Exchange Act
of 1934 – Section 12(h)

Nature of Issuer

The last factor mentioned in Section 12(h) is the nature and extent of the activities of the issuer and the income or assets of the issuer. All income and assets of the Company relate directly to its sales and operations.

The Company concedes that, if there were sufficient public ownership of and trading interest in its securities, consideration of the size or nature of the Company's business would not alone justify avoidance of the registration requirement of Section 12. However, because it has no public investors and no trading interest in its securities, the Company believes and it is our opinion that the purposes for which Section 12(g) was enacted would not be advanced by requiring the Company to register the options granted under the Plan.

Comparison to Relief Under Modified Set of Conditions

In the March 31, 2001 Quarterly Update to the Current Issues and Rulemaking Projects ("Quarterly Update"), the Commission staff announced that it has established a modified set of conditions for relief from those set forth in its prior no-action letters. The Company meets the Commission's modified conditions for relief as noted below.

- *The options may be immediately exercisable.* As described in paragraph #4 above in the "BACKGROUND" section of this letter under the subheading "Summary of the Options," options granted and to be granted under the Plan may become exercisable as soon as one year following the vesting commencement date, except for executives, who may be permitted to exercise their options immediately.
- *Former employees may retain their vested options.* As described in paragraph #5 above in the "BACKGROUND" section of this letter under the subheading "Summary of the Options," under the Plan, former employees are permitted to retain their vested options, and may exercise the vested portion of any option until the earlier of the expiration of that option and a specified period following such employee's termination, depending upon the reason for termination.
- *The options must remain non-transferable except in the event of death or disability of the optionholder.* As described in paragraph #10 above in the "BACKGROUND" section of this letter under the subheading "Summary of the Options," under the Plan, options are not transferable, except by will or by the laws of descent and distribution, unless under the limited circumstances described below, and the options may be exercised during the lifetime of an optionholder only by the optionholder. The Company undertakes that it will not permit the transfer of options during the lifetime of the holder of an option by such holder other than by gift to family members as defined under Rule 701 or pursuant to a domestic relations order, and no transferee shall be permitted to make a subsequent transfer (except back to the

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 15

Securities Exchange Act
of 1934 – Section 12(h)

transferor or to the Company), so long as the Company is relying on the relief granted in response to this request.

- *The stock received on exercise of the options may not be transferable, except back to the Company or in the event of death or disability.* Pursuant to the terms of the Plan⁶, common stock issued upon exercise of the options may not be transferred prior to the 181st day following an initial public offering of the Company or a change in control of the Company pursuant to which the Company shareholders receive cash or marketable securities, whichever is earlier. Executives who are permitted to exercise their options before they have fully vested are subject to the Company's right to repurchase their unvested shares in the event of their termination prior to vesting. The Company undertakes that (i) it will not permit an optionholder who has exercised his or her option to complete a transfer for value of any shares of common stock except under the circumstances described above, and (ii) so long as it is relying on the no-action relief granted pursuant to this request, it will repurchase all unvested shares upon termination of employment. Furthermore, the Company undertakes that it will not permit an optionholder who has exercised his or her option to complete a transfer without value of any shares of common stock except upon the holder's death, by gift to a family member within the meaning of Rule 701, or pursuant to the terms of a domestic relations order, and no transferee shall be permitted to make a subsequent transfer (except back to the Company) so long as the Company is relying on the relief granted in response to this request. (See, e.g., ISE Labs, Inc. (June 2, 2003), Seagate Removable Storage Solutions Holdings (March 7, 2003), and Headstrong Corporations (February 28, 2003), in which the Division granted no-action relief to issuers who permitted optionholders who had exercised their options to complete a transfer without value of any issuer shares by will or by the laws of descent and distribution, or a transfer to family members (as defined by Rule 701(c)(3)) who acquired such shares through gifts or domestic relations orders, as permitted within the parameters of Rule 701.) The Company confirms that it possesses the authority under the terms of the Plan and the agreements evidencing the options granted thereunder to limit both transfers for value and transfers without value of any common stock of the Company to the circumstances described in this paragraph.
- *Consultants may participate in the option plan if they would be able to participate under Rule 701.* As described above in the "BACKGROUND" section of this letter under the subheading "The Plan," the Company hereby confirms that any consultants who participate in the Plan are limited to those consultants who satisfy the definition of "consultants or advisors" set forth in Rule 701(c)(1).

⁶ As initially adopted, the Plan provided that the common stock issued pursuant to the exercise of an option would be subject to the drag-along rights of certain majority shareholders (the "Dragging Parties"). Subsequently, however, before the Dragging Parties ever exercised such drag-along rights, the Dragging Parties agreed to cancel any and all of their drag-along rights related to the Company's common stock issued under the Plan.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 16

Securities Exchange Act
of 1934 – Section 12(h)

Information Available to Optionholders and Shareholders

The Commission's modified position also is premised on both (1) optionholders and (2) holders of the Company's common stock who acquired their shares upon the exercise of an option granted under the Plan receiving materially equivalent Exchange Act registration statement, annual report and quarterly report information that they would have received had the Company registered the class of securities under Section 12, including audited financial statements and unaudited quarterly financial information, prepared in accordance with GAAP.

So long as the Company is relying on the relief requested by this letter, the Company undertakes to deliver the following information:

- (a) The Company will deliver to holders of the Company's options and stock received on exercise of the options an information statement (the "Information Statement") which contains materially equivalent information as the Company would prepare for an Exchange Act registration statement on Form 10. The Information Statement will include among other things, the following: information concerning the Company's business, selected financial data, information with respect to the market price of and dividends on the Company's common stock and related stockholder matters, disclosures of recent sales of unregistered securities, properties information, security ownership of certain beneficial owners and management, directors and executive officer information (including compensation information), certain relationships and related transactions information, legal proceedings information, a description of the Company's capital stock, a description of the indemnification of directors and officers, annual audited consolidated financial statements (prepared in accordance with GAAP), unaudited quarterly financial information (prepared in accordance with GAAP) through the period most recently available at the time the Information Statement is prepared, and information on changes in and disagreements with the accountants on accounting and financial disclosure.
- (b) After making the Information Statement available, the Company will subsequently deliver within 45 days after the end of each quarter to holders of the Company's options and common stock received on exercise of the options quarterly reports that contain materially equivalent information as the Company would prepare for an Exchange Act quarterly report on Form 10-Q. The quarterly reports will include, among other things, the following: unaudited quarterly financial statements prepared in accordance with GAAP, management's discussion and analysis of its financial condition and results of operations, quantitative and qualitative disclosures about market risk, legal proceedings information, disclosures of unregistered sales of securities and use of proceeds, information regarding the effectiveness of the Company's disclosure controls and procedures, information concerning any defaults upon senior securities and information concerning any matters submitted to a vote of security holders. This report will include a certification by the Company's Chief Executive Officer and Chief Financial Officer as required under the first three paragraphs of the certification required

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 17

Securities Exchange Act
of 1934 – Section 12(h)

under Item 601(b)(31) of Regulation S-K.

- (c) After making the Information Statement available, the Company will also subsequently deliver within 90 days after the end of each fiscal year to holders of the Company's options and common stock received on exercise of the options annual reports that contain materially equivalent information as the Company would prepare for an Exchange Act annual report on Form 10-K. The annual reports will include, among other things, the following information: information concerning the Company's business; properties information; legal proceedings information; information concerning any matters submitted to a vote of security holders; information with respect to the market for the Company's common stock, related stockholder matters, and Company repurchases of securities; information regarding the effectiveness of the Company's disclosure controls and procedures; selected financial information; management's discussion and analysis of its financial condition and results of operations; quantitative and qualitative disclosures about market risk; annual audited consolidated financial statements prepared in accordance with GAAP; information concerning any changes in and disagreements with accountants on accounting and financial disclosure information; directors and executive officers information (including compensation information); security ownership of certain beneficial owners and management; certain relationships and related transactions information; and disclosure of principal accounting fees and services. This report will include a certification by the Company's Chief Executive Officer and Chief Financial Officer as required under the first three paragraphs of the certification required under Item 601(b)(31) of Regulation S-K.

The Company undertakes to deliver free of charge, to holders of the Company's options and shares of common stock received on exercise of the options, copies of the quarterly reports and annual reports, on a continuing basis, so long as the holder agrees to keep such documents confidential. In the event a holder will not agree to keep such documents confidential, the Company undertakes to make the quarterly reports and annual reports available for inspection during normal business hours from the Finance Department at its corporate headquarters in San Jose, California.

So long as the Company is relying on the relief requested by this letter, the Company undertakes to deliver to optionholders under the Plan and its other equity holders an information statement in the form required under the proxy disclosure rules containing any information pertaining to a change in or amendment to the Plan that would otherwise require a shareholder vote.

So long as the Company is relying on the relief requested by this letter, the Company will make available to optionholders under the Plan the current vesting status of all options, and use reasonable efforts to otherwise provide such optionholder, so long as it receives reasonable notice of the optionholder's decision to terminate employment with the Company, with all material and relevant information that is necessary to the decision of whether to terminate employment and thereby forfeit the options.

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 18

Securities Exchange Act
of 1934 – Section 12(h)

So long as the Company is relying on the relief requested by this letter, the Company will make available to each optionholder under the Plan upon request access to the Company's books and records, including corporate governance documents, to the same extent it is obligated to make such books and records available to the Company's other securityholders.

So long as the Company is relying on the relief requested by this letter, the Company will make available to each optionholder under the Plan such other information as the Company may otherwise generally provide to its other securityholders.

The above information requirements will terminate once the Company becomes a reporting company under the Exchange Act when the Company would instead comply with the information requirements contained in the Exchange Act and the rules thereunder.

CONCLUSION

Because of the absence of public investors and trading interest in the Company's securities, the Company believes and it is our opinion that neither the public interest nor the protection of investors will be furthered by requiring the Company to be subject to the registration requirements of the Exchange Act on account of its granting options under the Plan pursuant to the terms of the Plan on the terms described in this letter.

We respectfully request an exemption pursuant to Section 12(h) of the Exchange Act from the registration requirements of Section 12(g) of the Exchange Act or, otherwise request that the Division provide its assurance pursuant to a no-action letter that it will not raise any objection if the Company does not comply with the registration requirements of Section 12(g) of the Exchange Act, with respect to options granted, and to be granted, to the Company's employees, directors, and consultants and the employees, directors, and consultants of the Company's subsidiaries, under the Plan. We further request that the exemption or grant of no-action relief remain in effect until the earlier of (a) such time as the Company elects to become or in fact becomes a reporting company under the Exchange Act with respect to any class of the Company's securities, or (b) 120 days after the last day of the Company's fiscal year during which 500 or more persons become holders of any class of the Company's securities, other than options which have been granted under the Plan.

In accordance with Release No. 33-6269 (December 5, 1980), seven additional copies of this letter are enclosed. If for any reason the Division does not concur with our conclusions, we would appreciate the opportunity to confer with members of the Division by telephone prior to any written

Division of Corporate Finance
Securities and Exchange Commission
May 11, 2006
Page 19

Securities Exchange Act
of 1934 – Section 12(h)

response to this letter. If the Division needs any additional information regarding this letter, or if we may otherwise be of assistance, please telephone Richard A. Grimm at (650) 251-5285.

Very truly yours,

Richard A. Grimm

cc: Network General Central Corporation