

CIENA CORP  
Form S-4/A  
May 09, 2003

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As filed with the Securities and Exchange Commission on May 9, 2003

Registration No. 333-104825

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**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**PRE-EFFECTIVE AMENDMENT NO. 1**  
**TO**  
**FORM S-4**

**REGISTRATION STATEMENT**

**UNDER**  
**THE SECURITIES ACT OF 1933**

**CIENA Corporation**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**3661**  
(Primary Standard Industrial  
Classification Code Number)

**23-2725311**  
(I.R.S. Employer  
Identification Number)

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**1201 Winterson Road**  
**Linthicum, MD 21090**  
**(410) 865-8500**

(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)

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**Russell B. Stevenson, Jr.**  
**Senior Vice President, General Counsel and Secretary**  
**CIENA Corporation**  
**1201 Winterson Road**  
**Linthicum, MD 21090**  
**(410) 865-8500**

(Name, address, including zip code, and telephone number,  
including area code, of agent for service)

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*Copies to:*

**Michael J. Silver**  
**Amy Bowerman Freed**  
**Stephanie D. Marks**  
**Hogan & Hartson L.L.P.**  
**111 South Calvert Street**  
**Baltimore, MD 21202**  
**(410) 659-2700**

**Kathy A Fields**  
**Howard J. Beber**  
**Testa, Hurwitz & Thibault, LLP**  
**125 High Street**  
**Boston, MA 02110**  
**(617) 248-7000**

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this Registration Statement becomes effective and all other conditions to the merger contemplated by the Agreement and Plan of Merger dated as of April 9, 2003, as such agreement

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may be amended, described in the enclosed Prospectus have been satisfied or waived.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act of 1933 registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act of 1933, check the following box and list the Securities Act of 1933 registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

**The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this joint proxy statement/prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This joint proxy statement/prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.**

Dear WaveSmith Stockholder:

After careful consideration, the boards of directors of WaveSmith Networks, Inc. and CIENA Corporation have approved the merger of WaveSmith with CIENA. I am pleased to provide to you the enclosed proxy statement/prospectus relating to a special meeting of the stockholders of WaveSmith to be held on Wednesday, June 11, 2003, at 10:00 a.m. Eastern Time, at the offices of Testa, Hurwitz & Thibault, LLP at 125 High Street, Boston, Massachusetts.

At the special meeting, you will be asked to vote, in person or by proxy, on the proposed merger of WaveSmith with CIENA. The merger will be effected pursuant to the agreement and plan of merger, dated as of April 9, 2003, by and between CIENA and WaveSmith. Pursuant to the agreement and plan of merger, each outstanding share of capital stock of WaveSmith will be converted into the right to receive shares of CIENA common stock in the amounts set forth in the agreement and plan of merger. CIENA will issue approximately 33.6 million shares in the merger to WaveSmith's stockholders, including shares underlying WaveSmith stock options and warrants. CIENA common stock is traded on the Nasdaq National Market under the symbol CIEN. The closing price for CIENA common stock reported on the Nasdaq National Market on May 7, 2003, was \$5.52 per share. If the merger is approved and consummated, WaveSmith will cease to exist as a separate entity. Following the merger, based on 435,061,879 outstanding shares of CIENA common stock as of May 7, 2003, and assuming that all of the WaveSmith stock options or warrants have been exercised, WaveSmith stockholders would own approximately 7.7% of the combined company and CIENA stockholders would own approximately 92.3% of the combined company. The merger is described more fully in the proxy statement/prospectus. You will also be asked to vote, in person or by proxy, upon a proposal to approve payments that would otherwise result in parachute payments to disqualified individuals (as each of those terms are defined and used in Section 280G of the Internal Revenue Code of 1986, as amended). Section 280G of the Internal Revenue Code of 1986, the disqualified individuals and the nature of the payments are described more fully in the proxy statement/prospectus.

As described in the notice to stockholders dated April 30, 2003, if the proposed merger with CIENA is approved at the special meeting, WS Contract Corp., a Delaware corporation and wholly-owned subsidiary of WaveSmith, will merge with and into WaveSmith immediately prior to the merger of WaveSmith into CIENA. In connection with the merger of WS Contract Corp. into WaveSmith, the Third Amended and Restated Certificate of Incorporation of WaveSmith will be amended and restated in its entirety and the liquidation preferences of the shares of WaveSmith's preferred stock will be reduced.

WaveSmith's board of directors has carefully reviewed and considered the terms and conditions of the merger and the agreement and plan of merger and has concluded that the terms are fair to, and in the best interests of, WaveSmith and its stockholders. WaveSmith's board of directors recommends that you vote **FOR** approval and adoption of the merger and the agreement and plan of merger.

The agreement and plan of merger must be approved and adopted by the holders of (i) a majority of the outstanding shares of WaveSmith's common stock and preferred stock, voting as a single class on an as-converted basis, (ii) a majority of the outstanding shares of WaveSmith's series A and series A-1 preferred stock, voting together as a single class on an as-converted basis, (iii) 60% of the outstanding shares of WaveSmith's series B and series B-1 preferred stock, voting together as a single class on an as-converted basis, and (iv) 75% of the outstanding shares of WaveSmith's series C preferred stock, voting as a separate class on an as-converted basis. Stockholders of WaveSmith entitled to vote at the special meeting who collectively beneficially own approximately 25.5% of WaveSmith's common stock, 87.9% of WaveSmith's series A and A-1 preferred stock, on an as-converted basis, 81.0% of WaveSmith's series B and B-1 preferred stock, on an as-converted basis, 72.0% of WaveSmith's series C preferred stock, on an as-converted basis and 63.5% of WaveSmith's common stock and preferred stock together, on an as-converted basis, have already agreed to vote their shares in favor of the merger and the agreement and plan of merger. In order to ensure that certain payments to certain current and former directors, officers and employees of WaveSmith are not treated as parachute payments, the affirmative vote of more than 75% of the voting power of all outstanding capital stock of WaveSmith (other than stock held by the affected persons) is required to approve the proposal to approve these payments. **You are encouraged to review the enclosed proxy statement/prospectus and in particular review the matters referred to under Risk Factors starting on page 9.** Whether or not you plan to attend the special meeting, please take the time to vote by promptly completing the enclosed proxy card and mailing it in the postage-paid envelope provided to WaveSmith Networks, Inc., 35 Nagog Park, Acton, Massachusetts, 01720, Attention: Gregg Savage. **Your vote is very important.**

On Behalf of the Board of Directors,

Thomas Burkardt  
Chief Executive Officer and President

**Prospectus dated May 9, 2003**  
**First mailed to stockholders on or about May 9, 2003**

**Neither the Securities and Exchange Commission nor any state securities regulator has approved or disapproved of these securities or passed upon the adequacy or accuracy of this proxy statement/prospectus. Any representation to the contrary is a criminal offense.**

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**WAVESMITH NETWORKS, INC.**

35 Nagog Park  
Acton, MA 01720  
(978) 929-9100

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON WEDNESDAY, JUNE 11, 2003**

To the stockholders of WaveSmith Networks, Inc.:

A special meeting of the stockholders of WaveSmith Networks, Inc., a Delaware corporation, will be held at the offices of Testa, Hurwitz & Thibault, LLP, 125 High Street, Boston, Massachusetts, on Wednesday, June 11, 2003 at 10:00 a.m. Eastern Time for the following purposes:

1. To approve and adopt the merger and the agreement and plan of merger, dated as of April 9, 2003, by and between CIENA Corporation and WaveSmith pursuant to which WaveSmith will be merged with and into CIENA, with CIENA being the surviving corporation. A copy of the agreement and plan of merger is attached as Annex A to the proxy statement/prospectus accompanying this notice;
2. To approve the payments to Thomas Burkardt, John Burnham, Robert Dalias, Robert Doucette, Francis Fiorillo, Pamela Nelson, John O Hara, Robert O Neil, James Philippou, Michael Regan, Gregg Savage and Gary Styskal of amounts that would otherwise result in parachute payments under Section 280G of the Internal Revenue Code of 1986;
3. To grant discretionary authority to the WaveSmith board of directors to adjourn or postpone the WaveSmith special meeting to solicit additional votes to approve the matters considered at the meeting, if necessary; and
4. To consider and act upon any other matter which may properly come before the special meeting.

This proxy statement/prospectus and the proxy card are being furnished to the stockholders of WaveSmith in connection with the solicitation of proxies by WaveSmith's board of directors for use at the special meeting of stockholders.

WaveSmith's board of directors has approved the merger and the agreement and plan of merger and recommends that you vote **FOR** approval and adoption of the merger and agreement and plan of merger and **FOR** the grant of discretionary authority to adjourn the special meeting. The proposals are described in more detail in the accompanying proxy statement/prospectus, which you should read in its entirety before voting.

The board of directors has fixed the close of business on May 7, 2003 as the record date for determining the stockholders entitled to receive this notice, and to vote their shares at the meeting or any adjournment or postponement of the meeting. Only holders of record of common stock and preferred stock of WaveSmith at the close of business on the record date will be entitled to notice of, and to vote at, the meeting and any adjournment or postponement of the meeting. As of that date, there were (i) 79,663,130 shares of common stock outstanding, (ii) 185,000 shares of series A preferred stock outstanding, (iii) 9,015,000 shares of series A-1 preferred stock outstanding, (iv) 2,353,370 shares of series B preferred stock outstanding, (v) 33,333,331 shares of series B-1 preferred stock outstanding and (vi) 92,963,301 shares of series C preferred stock outstanding.

Each share of common stock is entitled to 1 vote on each matter brought properly before the meeting. Each share of preferred stock is entitled to a number of votes equal to the number of shares of common stock into which such share of preferred stock may be converted into pursuant to WaveSmith's certificate of incorporation. Each share of series A preferred stock is entitled to 2 votes for each matter brought properly before the meeting. Each share of series A-1 preferred stock is entitled to 3.51667 votes for each matter brought properly before the meeting. Each share of series B preferred stock is entitled to 1 vote for each matter brought properly before the meeting. Each share of series B-1 preferred stock is entitled to 2.4

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votes for each matter brought properly before the meeting. Each share of series C preferred stock is entitled to 1 vote for each matter brought properly before the meeting.

The representation in person, or by properly executed proxy, of the holders of a majority of all shares of capital stock entitled to vote at the special meeting is necessary to constitute a quorum at the special meeting of WaveSmith. In connection with the separate votes by the series A and series A-1 preferred stock, series B and series B-1 preferred stock and series C preferred stock, one-third of the outstanding shares of such class or classes of capital stock, present in person or represented by proxy, shall constitute a quorum entitled to take action at the WaveSmith special meeting and in favor of the other proposals.

Under Delaware law and the charter documents of WaveSmith, approval and adoption of the merger and the agreement and plan of merger requires the affirmative votes of (i) a majority of the outstanding shares of WaveSmith's common stock and preferred stock, voting as a single class on an as-converted basis, (ii) a majority of the outstanding shares of WaveSmith's series A and series A-1 preferred stock, voting as a single class on an as-converted basis, (iii) 60% of the outstanding shares of WaveSmith's series B and series B-1 preferred Stock, voting as a single class on an as-converted basis and (iv) 75% of the outstanding shares of WaveSmith's series C preferred stock, voting as a separate class on an as-converted basis. Under Section 280G of the Internal Revenue Code of 1986, the affirmative vote of more than 75% of the voting power of all outstanding capital stock of WaveSmith (other than stock held by the affected persons) is required to approve the proposal to approve payments to disqualified individuals of amounts that would otherwise result in parachute payments.

The board of directors has designated the two persons named on the enclosed proxy card, Thomas Burkardt and Gregg Savage, to serve as proxies in connection with the special meeting. All properly executed proxy cards will be voted (except to the extent that authority to vote has been withheld) and where a choice has been specified by the stockholder as provided in the proxy card, it will be voted in accordance with the specifications on the proxy card. If you sign and send in your proxy card and do not indicate how you want to vote, it will be voted in favor of approval of the merger and the agreement and plan of merger, the approval of the payments that would otherwise result in parachute payments and in favor of the other proposals. You may revoke a proxy prior to its execution by giving written notice to Mr. Savage, the Secretary of WaveSmith, by submission of another proxy bearing a later date, or by voting in person at the special meeting. Such notice or later dated proxy will not affect a vote on any matter taken prior to the receipt of the proxy revocation by WaveSmith. Abstentions from voting identified as such on the proxy card are treated as present or represented for purposes of determining the presence or absence of a quorum at the special meeting. However, abstentions will have the same effect as votes against the merger and the agreement and plan of merger and the other proposals.

The proxy statement/prospectus materials are being mailed on or about May 9, 2003 to holders of record of WaveSmith's capital stock as of May 7, 2003. The principal executive office and mailing address of WaveSmith is 35 Nagog Park, Acton, MA 01720.

**WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING, PLEASE SIGN, DATE AND PROMPTLY RETURN THE ENCLOSED PROXY CARD, WHICH YOU MAY REVOKE AT ANY TIME PRIOR TO ITS USE. PROMPTLY SIGNING AND RETURNING YOUR PROXY CARD WILL HELP ENSURE THE PRESENCE OF A QUORUM FOR THE MEETING.** A postage-paid, self-addressed envelope is enclosed for your convenience. Your shares will be voted at the meeting in accordance with your proxy.

By Order of the Board of Directors,

Thomas Burkardt, Chief Executive Officer  
and President

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This proxy statement/ prospectus incorporates important business and financial information about CIENA from documents that it has filed with the Securities and Exchange Commission but that have not been included in or delivered with this proxy statement/ prospectus. For a listing of documents incorporated by reference into this proxy statement/ prospectus, please see the section entitled "Where You Can Find More Information" beginning on page 85 of this proxy statement/ prospectus.

CIENA will provide you with copies of this information, without charge, upon written or oral request to:

CIENA Corporation  
1202 Winterson Road  
Linthicum, Maryland 21090  
Attention: Investor Relations  
Telephone Number: (410) 865-8500

In addition, you may obtain copies of this information by sending an e-mail to [ir@ciena.com](mailto:ir@ciena.com).

**In order for you to receive timely delivery of the documents in advance of the special meeting, CIENA should receive your request no later than June 4, 2003.**

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**QUESTIONS AND ANSWERS ABOUT THE MERGER**

**Q: When and where will the special meeting take place?**

A: The special meeting will be held on Wednesday June 11, 2003 at 10:00 a.m. local time, at the offices of Testa, Hurwitz & Thibault, LLP, 125 High Street, Boston, Massachusetts.

**Q: What do I need to do now?**

A: You should carefully read and consider the information contained in this proxy statement/prospectus. You should then complete and sign your proxy card and return it in the enclosed return envelope as soon as possible so that your shares will be represented at WaveSmith's special meeting. If you sign, date and mail your proxy card without identifying how you want to vote, your proxy will be voted **FOR** the merger, **FOR** the approval of the payments that would otherwise result in parachute payments and **FOR** the grant of discretionary authority to adjourn the special meeting. If you do not vote, it will have the same effect as a vote **AGAINST** the proposals. You may also vote by appearing at the meeting and voting in person.

**Q: Who must approve the merger?**

A: In addition to the approvals of the boards of directors of CIENA and WaveSmith which have already been obtained, the following approvals of the stockholders of WaveSmith must be obtained:

holders of a majority of WaveSmith's common stock and preferred stock, voting as a single class on an as-converted basis;

holders of a majority of WaveSmith's series A and series A-1 preferred stock, voting together as a single class on an as-converted basis;

holders of 60% of WaveSmith's series B and series B-1 preferred stock, voting together as a single class on an as-converted basis; and

holders of 75% of WaveSmith's series C preferred stock, voting as a separate class on an as-converted basis.

**Q: Can I change my vote after I mail my signed proxy?**

A: Yes. You can change your vote at any time before your proxy is voted at the special meeting of WaveSmith's stockholders. You can do this in one of three ways. First, you can send a written notice stating that you would like to revoke your proxy. Second, you can complete and submit a new proxy. If you choose either of these two methods, you must submit your notice of revocation or your new proxy at the address on page 15. Third, you can attend the special meeting of your company's stockholders and vote in person. Your attendance alone will not revoke your proxy. If you have instructed a broker to vote your shares, you must follow the directions received from your broker to change those instructions.

**Q: Should I send in my certificates now?**

A: **No, you should not send in your stock certificates with your proxy.** You will receive instructions for exchanging your stock certificates if the merger is consummated.

**Q: Who can help answer my questions?**

A: If you have any questions about the merger, how to vote or revoke your proxy, or if you need additional copies of this proxy statement/prospectus or the enclosed proxy, you should contact Gregg Savage, WaveSmith's Chief Financial Officer and Secretary at (978) 489-2103.

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**SUMMARY**

*This summary highlights selected information from this proxy statement/prospectus. It does not contain all of the information that is important to you. You should carefully read this proxy statement/prospectus and the other documents incorporated by reference into this proxy statement/prospectus. See *Where You Can Find More Information* on page 85. In this proxy statement/prospectus, *we*, *us* and *our* may refer to either CIENA or WaveSmith, depending on the context in which they are used, and *you* and *your* refer to stockholders of WaveSmith.*

**The Companies (page 61)**

***CIENA Corporation***

1201 Winterson Road  
Linthicum, Maryland 21090  
(410) 865-8500

CIENA is a leader in intelligent optical networking systems and software, offering telecommunications network solutions to service providers and enterprises worldwide. CIENA's customers include long-distance carriers, local exchange carriers, Internet service providers, wireless and wholesale carriers, systems integrators, governmental, large businesses and non-profit institutions. CIENA offers network solutions that enable service providers to provision, manage and deliver economic, high-bandwidth services to their customers.

***WaveSmith Networks, Inc.***

35 Nagog Park  
Acton, MA 01720  
(978) 929-9100

WaveSmith designs, develops and markets a next generation multi-service switch platform designed to empower telecommunications carriers to cap their investments in aging technology, while they begin deploying next-generation platforms. In this way, WaveSmith's products embrace carriers' near-term, tactical requirements as well as their longer-term strategic visions. WaveSmith's Distributed Node (DN) multi-service switch platform is designed from the ground up to sustain and leverage today's layer 2 infrastructure while incorporating an evolutionary path to future technologies.

**Vote Required for the Merger (page 13)**

Under Delaware law and WaveSmith's certificate of incorporation, the following stockholder approvals are required to approve the merger:

holders of a majority of WaveSmith's common stock and preferred stock, voting as a single class on an as-converted basis;

holders of a majority of WaveSmith's series A and series A-1 preferred stock, voting together as a single class on an as-converted basis;

holders of 60% of WaveSmith's series B and series B-1 preferred stock, voting together as a single class on an as-converted basis; and

holders of 75% of WaveSmith's series C preferred stock, voting as a separate class on an as-converted basis.

There were 79,663,130 shares of WaveSmith common stock and 137,850,002 shares of WaveSmith preferred stock, comprised of 185,000 shares of WaveSmith series A preferred stock, 9,015,000 shares of WaveSmith series A-1 preferred stock, 2,353,370 shares of WaveSmith series B preferred stock, 33,333,331 shares of WaveSmith series B-1 preferred stock and 92,963,301 shares of WaveSmith series C preferred stock outstanding as of May 7, 2003. Each holder of WaveSmith common stock is entitled to one vote per share and each holder of WaveSmith preferred stock is entitled to one vote for each full share of common stock into which its shares of preferred stock are convertible.

As of the record date, WaveSmith's officers and directors and their affiliates owned approximately 48.9% of WaveSmith's outstanding common stock, 87.9% of WaveSmith's outstanding series A and A-1 preferred stock on an as-converted basis, 81.0% of WaveSmith's outstanding series B and B-1 preferred stock on an as-converted basis and 54.1% of WaveSmith's outstanding series C preferred stock on an as-converted basis.

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Several WaveSmith stockholders beneficially owning in the aggregate the following numbers of shares entered into agreements under which they agreed to vote their shares in favor of the merger and approval of the merger agreement:

182,175,585 shares, representing 63.5% of WaveSmith's common stock and preferred

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stock, voting as a single class on an as-converted basis;

28,203,689 shares, representing 87.9% of WaveSmith's series A and series A-1 preferred stock, together on an as-converted basis;

66,666,661 shares, representing 81.0% of WaveSmith's series B and series B-1 preferred stock, together on an as-converted basis; and

66,961,835 shares, representing 72.0% of WaveSmith's series C preferred stock, as a separate class on an as-converted basis.

Additionally, CIENA's wholly-owned subsidiary, MultiWave Investment, Inc., owns 16,666,667 shares of series C preferred stock, representing 17.9% of WaveSmith's series C preferred stock, which it intends to vote in favor of the merger and approval of the merger agreement.

**The Merger (page 17)**

The merger agreement provides that WaveSmith will merge with and into CIENA and CIENA will be the surviving company.

*The merger agreement is included as Annex A to this proxy statement/prospectus. It is the legal document that governs the merger.*

***Reasons for the Merger and Recommendation of the WaveSmith Board of Directors (page 25)***

The WaveSmith board of directors has determined that the merger is advisable and in the best interests of WaveSmith and its stockholders. The WaveSmith board of directors recommends that WaveSmith stockholders vote **FOR** the proposal to approve and adopt the merger agreement and approve the merger.

See "The Merger Recommendation of the WaveSmith Board of Directors and Reasons for the Merger" for the reasons supporting the WaveSmith board of directors' recommendations.

***What you will receive in the Merger (page 36)***

In the merger, you will receive a fraction of a share of CIENA common stock for each share of WaveSmith common stock or preferred stock that you own, in each case as determined by application of the formulas set forth under "Terms of the Merger Agreement and Related Transactions Treatment of Stock, Options and Warrants." You will receive cash for any fractional share of CIENA common stock that you would otherwise receive in the merger.

The formulas by which the number of shares of CIENA common stock to be received for each share of WaveSmith capital stock are fixed. The number of shares of CIENA common stock to be received for each share of WaveSmith capital stock is subject to adjustment only in the event that WaveSmith's fully-diluted outstanding capital stock changes due to option issuances, stock repurchases and similar events. Any issuance of WaveSmith capital stock due to the exercise of options or warrants currently outstanding will not affect the exchange ratios, as they are calculated on a fully-diluted, or fully-exercised, basis. WaveSmith stockholders will not know the value of the CIENA common stock they will receive in the merger when the special meeting of the WaveSmith stockholders is held. The value of the CIENA common stock will depend upon its market price when the merger is completed. The number of shares of CIENA common stock received will depend upon the number of shares of WaveSmith capital stock outstanding on the day the merger is completed.

For example, if the total number of shares of WaveSmith capital stock outstanding on a fully-diluted basis on the day the merger is completed is 291,793,926, which is the number of shares of capital stock outstanding on a fully-diluted basis on the record date, the following exchange ratios, rounded to the nearest ten thousandth, would apply:

Class of WaveSmith Stock	Exchange Ratio
Common Stock	0.0851
Series A Preferred	0.3857
Series A-1 Preferred	0.4422
Series B Preferred	0.2512
Series B-1 Preferred	0.3118
Series C Preferred	0.1458



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The following chart gives a few examples of the number of shares of CIENA common stock that a holder of 100 shares of WaveSmith common stock would receive in the merger, assuming the application of the exchange ratio from the above table, and the value of those shares at a range of prices of CIENA common stock. The chart does not

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include cash received for fractional shares or cash paid in respect of dissenting shares.

Illustrative Closing Price of CIENA Common Stock at Closing	Number of Shares of CIENA Common Stock Issued at Closing to the Holder of 100 Shares of WaveSmith Common Stock	Value of Shares of CIENA Common Stock Issued at Closing to the Holder of 100 Shares of WaveSmith Common Stock
\$7.00	8	\$56.00
\$6.00	8	\$48.00
\$5.52*	8	\$44.16
\$5.00	8	\$40.00
\$4.00	8	\$32.00

\* The closing price of CIENA common stock on May 7, 2003.

See Terms of the Merger Agreement and Related Transactions Exchange of Certificates; Fractional Shares on page 37.

**Please do not send your stock certificates at this time.**

***Total Consideration CIENA Will Pay***

At the effective time of the merger, CIENA will issue approximately 35,389,096 shares of its common stock in exchange for all WaveSmith outstanding common and preferred stock, including shares of series C preferred stock owned by MultiWave Investment, Inc. As of May 7, 2003, these shares have an aggregate value of approximately \$195 million. Additionally, CIENA will assume the obligation to issue an additional approximately 658,402 shares of CIENA common stock on the exercise of outstanding options and warrants. This assumes that the number of shares of WaveSmith's capital stock outstanding on a fully-diluted basis on the day the merger is completed is 291,793,926.

***Appraisal Rights of Dissenting Stockholders (page 33)***

**If you object to the merger, Delaware law permits you to seek relief as a dissenting stockholder and have the fair value of your shares of WaveSmith common stock and WaveSmith preferred stock determined by a court and paid to you in cash.**

If you are a WaveSmith stockholder and wish to dissent, you must deliver to WaveSmith, prior to the vote on the merger at the special meeting, a written demand for appraisal of your shares. You also must not vote in favor of the merger agreement. To not vote in favor of the merger agreement, you can either:

vote no in person at the special meeting or by proxy;

abstain from voting;

fail to vote; or

if you returned a duly executed proxy and revoke your proxy prior to the special meeting.

Beneficial owners of WaveSmith common stock or WaveSmith preferred stock whose shares are held of record by another person, such as a bank, broker or nominee, and who wish to seek appraisal, should instruct the record holder to follow the appraisal procedures of Delaware law. The relevant provisions of Delaware law are technical in nature and complex. If you wish to exercise appraisal rights and obtain appraisal of the fair value of your shares, you may wish to consult with legal counsel, because the failure to comply strictly with these provisions may result in waiver or forfeiture of your appraisal rights.

*A copy of the relevant section of Delaware law governing this process is attached as Annex B to this proxy statement/prospectus.*

*Indemnification and Escrow Agreement (page 43)*

If the merger occurs, all holders of WaveSmith capital stock who have not elected the appraisal rights described above, will be obligated to indemnify CIENA and its affiliates against losses due to, among other things, the breach or inaccuracy of any of WaveSmith's representations and warranties made in the merger agreement. This obligation is limited to 10% of the total number of shares of CIENA common stock issued in the merger to holders of outstanding WaveSmith capital stock and 10% of the total number of shares of CIENA common stock which is allocable to vested WaveSmith options which are assumed in the merger. An escrow arrangement will be established at closing to hold these amounts. Michael Feinstein, who is a member of WaveSmith's board of directors and a senior principal of Atlas Venture will serve as Stockholder Representative on behalf of all former WaveSmith stockholders. Investment funds affiliated with Atlas Venture are significant stockholders of WaveSmith. See Security Ownership of Directors, Executive Officers and More Than Five Percent Stockholders of WaveSmith. The escrow

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and indemnification obligations will end one year after closing. At that time, the escrowed shares will be released to the former WaveSmith stockholders, reduced by any amounts paid or reserved for claims made by CIENA. WaveSmith stockholders will also contribute a total of 53,011 shares of CIENA common stock to the escrow fund to pay the expenses of the Stockholder Representative. These shares had a value of \$250,000 on April 9, 2003 and a value of approximately \$292,621 on May 7, 2003. See Terms of the Merger Agreement and Related Transactions Indemnification and Escrow Arrangement.

**Consequently, in some circumstances you could be required to forfeit to CIENA some of the CIENA common stock you would otherwise receive in the merger.**

### ***What is Needed to Complete the Merger (page 44)***

Several conditions must be satisfied before the merger will be completed. These include:

adoption of the merger by the WaveSmith stockholders as described above; and

other customary contractual conditions set forth in the merger agreement.

If the law permits, CIENA or WaveSmith may each waive conditions for the benefit of its company and stockholders and complete the merger even though one or more of these conditions has not been met. WaveSmith's stockholder approval cannot be waived. If a material condition is waived by WaveSmith, we will resolicit the vote of its stockholders. We cannot assure you that the conditions will be satisfied or waived or that the merger will occur.

### ***Termination of the Merger Agreement; Expenses (page 45)***

CIENA and WaveSmith may mutually agree at any time to terminate the merger agreement without completing the merger, even if the WaveSmith stockholders have approved it. Either party (so long as it has not materially breached the merger agreement) may terminate the merger if:

the merger has not been consummated by August 15, 2003, or, if extended by CIENA under certain conditions, October 15, 2003;

WaveSmith stockholders do not approve the merger; or

a court forbids the merger to occur.

WaveSmith may terminate the merger agreement prior to obtaining stockholder approval, so long as it has not materially breached the merger agreement, if:

the WaveSmith board of directors determines to enter into an alternative transaction that it views as superior to the merger, and

CIENA does not match the offer made in the other transaction.

CIENA may also terminate the merger agreement if WaveSmith's board of directors withdraws, modifies or amends, in any respect adverse to CIENA, its recommendation in favor of the merger or determines to pursue another transaction it considers superior.

WaveSmith has agreed to pay CIENA a termination fee of \$5.1 million if the merger agreement is terminated under either of these circumstances and specified other circumstances if a third party has made an offer to acquire WaveSmith. The merger agreement also requires WaveSmith to reimburse CIENA for its out-of-pocket expenses, up to a maximum of \$500,000, in those situations where the termination fee is payable.

Further, under a letter agreement entered into by CIENA, WaveSmith and MultiWave Investment,

Inc., a wholly-owned subsidiary of CIENA in connection with WaveSmith's series C preferred stock financing in September 2002, if prior to July 1, 2003 WaveSmith enters into a business combination with a party other than CIENA, WaveSmith will be liable to CIENA for a termination fee equal to 5% of the value of that transaction.

In the event that:

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CIENA terminates the merger agreement for reasons other than because the WaveSmith board of directors determined to enter into an alternative transaction that it views as superior to the merger;

WaveSmith terminates the merger agreement because the August 15 or October 15 expiration date occurs, stockholder approval is not obtained or an order of a court prevents completion of this transaction; or

the merger agreement is terminated by either party because the waiting period

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under the Hart-Scott-Rodino Antitrust Improvement Act of 1976 has not expired or been terminated, then, the reseller agreement between CIENA and WaveSmith, the letter agreement referred to above between CIENA, MultiWave Investment, Inc. and WaveSmith and the agreements CIENA has with several holders of WaveSmith capital stock will also terminate.

***Merger of WS Contract Corp. into WaveSmith***

As part of the negotiations of the terms of the merger of WaveSmith into CIENA, WaveSmith and CIENA agreed that the CIENA stock to be issued as consideration in connection with the merger should be distributed in a manner that differed from the results obtained under the existing charter documents of WaveSmith. The distribution agreed upon by the parties resulted in a greater number of shares being allocated to the holders of WaveSmith common stock. Stockholders of WaveSmith have approved the merger of WS Contract Corp. into WaveSmith and the related changes to the charter documents of WaveSmith immediately prior to the merger of WaveSmith into CIENA to implement this change. The changes to the WaveSmith charter documents reduces the preference amounts for each series of preferred stock of WaveSmith as follows:

Class of Stock	Original Preference Amount	New Preference Amount
Series A Preferred Stock	\$ 1.25	\$ 1.016030
Series A-1 Preferred Stock	1.25	0.673904
Series B Preferred Stock	0.90	0.783015
Series B-1 Preferred Stock	0.90	0.506835
Series C Preferred Stock	0.45	0.286181

See Terms of the Merger Agreement and Related Transactions Merger of WS Contract Corp. into WaveSmith.

***Federal Income Tax Consequences (page 30)***

In the opinion of Hogan & Hartson L.L.P., counsel to CIENA, and Testa, Hurwitz & Thibault, LLP, counsel to WaveSmith, the merger will qualify as a tax-free reorganization. As a general matter, therefore, no gain or loss will be recognized by WaveSmith stockholders on the exchange of their WaveSmith capital stock for CIENA common stock pursuant to the reorganization, except with respect to cash received in lieu of fractional shares and cash received in exchange of WaveSmith shares by WaveSmith stockholders who dissent to the merger. There is an exception to the general tax-free treatment, however, resulting from the merger of WS Contract Corp. into WaveSmith immediately prior to the merger of WaveSmith into CIENA. This transaction will cause the value of the WaveSmith common stock to be increased, resulting in WaveSmith common stockholders receiving a greater number of shares of CIENA common stock pursuant to the merger than such stockholders would have received if the merger of WS Contract Corp. into WaveSmith had not occurred. Although the matter is not free from doubt, CIENA and WaveSmith believe that this additional value should be taxed to the WaveSmith common stockholders as ordinary income. For a further discussion of the federal income tax consequences of these transactions, see The Merger Federal Income Tax Consequences. Different tax consequences may apply to you because of your individual circumstances or because special tax rules apply to you.

**These matters are very complicated. You should consult your tax advisor for a full explanation of the tax consequences of the merger to you.**

***Approval of Payments that Would Otherwise Result in Parachute Payments (page 49)***

In connection with the change in control that results from the merger of WaveSmith into CIENA, certain current and former directors, officers and employees will receive payments that could constitute so-called parachute payments under the Internal Revenue Code of 1986. For these individuals, these payments may arise as a result of the following:

the value of grants of, and acceleration of vesting in, shares of restricted WaveSmith common stock;

the value of acceleration of options to acquire WaveSmith common stock;

the increase in value of WaveSmith common stock resulting from the merger of WS Contract Corp. into WaveSmith and treated, for federal income tax purposes, as compensation; and



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the value of severance payments and certain other benefits received or to be received pursuant to the terms of letter agreements with existing and recently departed executives.

Under the Internal Revenue Code of 1986, an amount paid to certain individuals in connection with a change in control is a parachute payment only if the aggregate present value of all payments made to an individual in connection with the change in control exceeds three times the affected individual's base amount. An amount is an excess parachute payment to the extent the amount exceeds one times the affected individual's base amount. To the extent payments are excess parachute payments, they are not deductible by the corporation and an excise tax (in addition to regular income and employment taxes) is imposed on the recipient. However, payments will not be treated as parachute payments if holders of more than 75% of the voting power of all outstanding capital stock of WaveSmith, other than the affected persons, approve these payments. If the payments are not approved, each affected individual has agreed to forego the portion of the payments that would cause the individual to receive a parachute payment. You are being asked to vote to approve these payments by a separate vote from your vote on the merger. CIENA's subsidiary, MultiWave Investments, Inc., intends to vote its 16,666,667 shares of Series C preferred stock in favor of the proposal to approve the payments. For a further discussion of the treatment of these payments and shareholder approval of these payments, see Approval of Change in Control Payments for Federal Income Tax Purposes.



**Table of Contents****SUMMARY SELECTED CONSOLIDATED HISTORICAL****FINANCIAL DATA OF CIENA****Summary Selected Consolidated Historical Financial Data of CIENA**

The information in the following summary selected consolidated financial data as of October 31, 1998, 1999, 2000, 2001 and 2002 and for the years ended October 31, 1998, 1999, 2000, 2001 and 2002 is derived from CIENA's audited consolidated financial statements. You should read this information in conjunction with the financial statements and notes to the consolidated financial statements which are incorporated by reference into this proxy statement/prospectus. See *Where You Can Find More Information* which begins on page 85. CIENA's financial statements as of October 31, 2001 and 2002 and for each of the three years ended October 31, 2002 were audited by PricewaterhouseCoopers LLP, independent accountants. Selected financial information as of January 31, 2002 and 2003 and for the three months then ended is derived from CIENA's unaudited consolidated financial statements, which are incorporated into this proxy statement/prospectus by reference. CIENA has a 52 or 53 week fiscal year, which ends on the Saturday nearest to the last day of October in each year. For purposes of financial statement presentation, each fiscal year is described as having ended on October 31. Fiscal 1998, 1999, 2000 and 2002 comprised 52 weeks and fiscal 2001 comprised 53 weeks. Historical events are not necessarily indicative of results to be expected in the future and results of interim periods are not necessarily indicative of the results of the entire year.

	As of October 31,					As of January 31,	
	1998	1999	2000	2001	2002	2002	2003
	(in thousands)						
<b>Balance Sheet Data:</b>							
Cash and cash equivalents	\$250,714	\$143,440	\$143,187	\$397,890	\$377,189	\$472,533	\$305,053
Working capital	391,305	427,471	639,675	1,936,707	1,413,839	1,653,035	1,154,876
Total assets	602,809	677,835	1,027,201	3,317,301	2,751,022	3,218,778	2,543,066
Long-term obligations, excluding current portion	3,029	4,881	4,882	869,865	999,935	695,740	875,395
Stockholders' equity	\$501,036	\$530,473	\$809,835	\$2,128,982	\$1,527,269	\$2,068,365	\$1,427,195

	Year Ended October 31,					Three Months Ended Jan. 31,	
	1998	1999	2000	2001	2002	2002	2003
	(in thousands, except per share data)						
<b>Statement of Operations Data:</b>							
Revenue	\$508,087	\$482,085	\$858,750	\$1,603,229	\$361,155	\$162,156	\$70,474
Provision (benefit) for excess and obsolete inventory costs	9,617	6,534	15,022	68,411	286,475	20,414	(2,657)
Cost of goods sold	246,397	293,235	462,371	836,138	309,559	119,273	56,866
Gross profit (loss)	252,073	182,316	381,357	698,680	(234,879)	22,469	16,265
Operating expenses:							
Research and development (exclusive of \$0, \$0, \$0, \$17,783, \$15,672, \$3,951 and \$3,798 deferred stock compensation costs)	71,186	101,006	125,434	235,831	239,619	64,756	53,734
Selling and marketing (exclusive of \$0, \$0, \$0, \$8,378, \$3,560, \$956 and \$759 deferred stock	47,343	61,603	90,922	146,949	130,276	37,600	26,605

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compensation costs)							
General and administrative (exclusive of \$40, \$40, \$40, \$15,206, \$1.092, \$227 and \$374 deferred stock compensation costs)	18,428	22,696	33,960	57,865	50,820	13,655	12,206
Settlement of accrued contract obligation			(8,538)				
Deferred stock compensation costs	40	40	40	41,367	20,324	5,134	4,931
Amortization of goodwill	2,341	3,197	3,197	177,786			

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	Year Ended October 31,					Three Months Ended Jan. 31,	
	1998	1999	2000	2001	2002	2002	2003
(in thousands, except per share data)							
Amortization of intangible assets (exclusive of \$0, \$0, \$0, \$0, \$0, \$0 and \$381 included in cost of goods sold related to certain technology licenses)	229	438	438	4,413	8,972	1,813	3,554
In-process research and development	9,503			45,900			
Restructuring costs				15,439	225,429	6,828	
Goodwill impairment				1,719,426	557,286		
Nortel settlement costs							2,500
Pirelli litigation	30,579				1,792		
Merger related costs	2,548	13,021					
Provision for doubtful accounts	806	250	28,010	(6,579)	14,813		
<b>Total operating expenses</b>	<b>183,003</b>	<b>202,251</b>	<b>273,463</b>	<b>2,438,397</b>	<b>1,249,331</b>	<b>129,786</b>	<b>103,530</b>
Income (loss) from operations	69,070	(19,935)	107,894	(1,739,717)	(1,484,210)	(107,317)	(87,265)
Other income (expense), net	12,830	13,944	12,680	32,988	(2,554)	361	(19,518)
Income (loss) before income taxes	81,900	(5,991)	120,574	(1,706,729)	(1,486,764)	(106,956)	(106,783)
Provision (benefit) for income taxes	36,200	(2,067)	39,187	87,333	110,735	(36,365)	359
<b>Net income (loss)</b>	<b>\$ 45,700</b>	<b>\$ (3,924)</b>	<b>\$ 81,387</b>	<b>\$(1,794,062)</b>	<b>\$(1,597,499)</b>	<b>\$ (70,591)</b>	<b>\$(107,142)</b>
Basic net income (loss) per common share	\$ 0.19	\$ (0.01)	\$ 0.29	\$ (5.75)	\$ (4.37)	\$ (0.22)	\$ (0.25)
Diluted net income (loss) per common and dilutive potential common share	\$ 0.18	\$ (0.01)	\$ 0.27	\$ (5.75)	\$ (4.37)	\$ (0.22)	\$ (0.25)
Weighted average basic common shares outstanding	235,980	267,042	281,621	311,815	365,202	327,620	432,572
Weighted average basic common and dilutive potential common shares outstanding	255,788	267,042	299,662	311,815	365,202	327,620	432,572

**Significant events affecting CIENA's operating trends**The comparability of CIENA's operating results is affected by a number of significant and nonrecurring items recognized in some periods as well as acquisitions. In fiscal 1998, CIENA incurred special charges of \$30.6 million related to the Pirelli litigation, \$2.6 million of merger related costs associated with the contemplated merger with Tellabs and \$9.5 million in-process research and development charge associated with the acquisition of Terabit Technology. In fiscal 1999, CIENA incurred \$13.0 million of merger related costs associated with the purchase of Lightera and Omnia. In fiscal 2000, CIENA incurred \$28.0 million of additional provision for doubtful accounts associated with the write-off of customer receivables. In fiscal 2001, CIENA recorded a goodwill impairment of \$1,719.4 million related to the Cyras acquisition, an in-process research and development charge of \$45.9 million in connection with the Cyras acquisition, and restructuring costs to close facilities and terminate employees of \$15.4 million. In fiscal 2002, CIENA recorded a \$286.5 million provision for excess and obsolete inventory, \$225.4 million for restructuring costs to close facilities, dispose of certain excess equipment and terminate employees, and \$557.3 million related to goodwill impairment. During the three months ended January 31, 2002, CIENA recorded \$6.8 million of restructuring costs associated with exiting facilities and terminating employees. The operating results have been significantly impacted by the acquisitions of Lightera and Omnia in 1999, Cyras Systems in 2001 and ONI Systems in 2002.

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**RISK FACTORS**

*In addition to the risks described in CIENA's most recently filed Form 10-Q, you should carefully consider the following risk factors relating to the merger before deciding how to vote your shares. You should also consider the other information contained in or incorporated by reference into, this proxy statement/prospectus. See "Where You Can Find More Information" on page 85.*

**The value of the CIENA common stock that WaveSmith stockholders receive in the merger will depend on its market price at the time of the merger, and no adjustment will be made if that market price declines.**

The value of CIENA common stock that WaveSmith stockholders will receive in the merger depends on the market price of CIENA common stock. The market price of CIENA common stock may decline, causing the value of the consideration received by WaveSmith stockholders in the merger to decline. The market price of CIENA common stock is extremely volatile and has fluctuated over a wide range. From May 7, 2002 to May 7, 2003, CIENA common stock traded as high as \$7.74 per share and as low as \$2.41 per share. From April 8, 2003, the last trading day prior to the date on which the merger was announced, through May 7, 2003, the price of CIENA common stock has increased approximately 18%. The market price of CIENA common stock may continue to fluctuate significantly in response to various factors, including:

quarterly variations in operating results principally due to customer purchasing decisions;

changes in estimates by securities analysts;

continued low levels in capital spending by customers; and

general economic conditions.

**Neither company can terminate the merger due to fluctuations in CIENA's stock price.**

Neither party has the right to terminate the merger due to increases or decreases in CIENA's stock price, even if those fluctuations would materially affect the value of the consideration WaveSmith stockholders will receive in the merger. CIENA has agreed to issue approximately 36,047,498 shares of CIENA common stock for all of WaveSmith outstanding capital stock, including the assumption of outstanding options to acquire WaveSmith stock. This represented a value of approximately \$170 million on April 8, 2003, based on a per share price for CIENA common stock of \$4.716, which is the average of the closing price for CIENA's common stock for the last five trading days prior to the date on which the merger was announced. This amount, however, includes approximately 2,430,044 shares issuable in respect of shares of WaveSmith series C preferred stock that CIENA already owns.

If the price for CIENA common stock increases, CIENA would not be able to terminate the merger, even though it would be paying significantly more for WaveSmith. If the price of CIENA common stock decreases, WaveSmith would not be able to terminate the merger, even though its stockholders would receive less value for their shares of WaveSmith. The value of the aggregate consideration to be received by WaveSmith stockholders was calculated on April 9, 2003, the date the merger agreement was executed, using the average closing price for CIENA common stock for the five days ending on April 8, 2003, which was \$4.716. On May 7, 2003, the closing price of CIENA common stock had increased to \$5.52, thereby increasing the value of the consideration to be paid for all of WaveSmith outstanding capital stock and stock options to approximately \$199 million.

**Directors and officers of WaveSmith may have conflicts of interest that influenced their decisions to approve the merger.**

You should be aware of potential conflicts of interest of, and the benefits available to, directors and executive officers of WaveSmith when considering the WaveSmith board of directors' recommendation of the merger agreement. Some directors and executive officers of WaveSmith have interests in the merger that are in addition to, or different from, their interests as WaveSmith stockholders. These interests are described under "The Merger - Interests of Executive Officers and Directors in the Merger" on page 27.

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These interests include:

*Accelerated Vesting of Restricted Stock.* WaveSmith's right to repurchase an aggregate of 16,795,825 shares of WaveSmith common stock held by executive officers and directors will terminate upon completion of the merger.

*Directors and Officers Insurance; Indemnification of WaveSmith's Directors and Officers.* Under the merger agreement, CIENA will purchase insurance and provide indemnification for present and former directors of WaveSmith with respect to acts and omissions in their capacities as directors and officers of WaveSmith, for six years following closing, including acts and omissions relating to the merger.

*Reallocation of Consideration to Common Stockholders.* As a result of the merger of WS Contract Corp. into WaveSmith immediately prior to the merger of WaveSmith into CIENA, the value of the WaveSmith common stock will be increased, resulting in WaveSmith common stockholders, including stockholders who are executive officers of WaveSmith, receiving a greater number of shares of CIENA common stock pursuant to the merger than such stockholders would have received if the merger of WS Contract Corp. into WaveSmith had not occurred.

The acceleration of vesting, grant of restricted stock, payment of severance benefits and the increase in value of the WaveSmith common stock resulting from the merger of WS Contract Corp. into WaveSmith, in the case of some individuals, may be deemed to trigger a parachute payment, with significant adverse tax consequences to the affected persons. In order to avoid these consequences, stockholders of WaveSmith are being asked to approve the payments, to the extent the payments would cause the affected individuals to receive parachute payments, by separate vote at the meeting to which this proxy statement/prospectus relates.

**The structure and implementation of the merger involve a number of risks including risks of integration, unknown liabilities, tax, securities and accounting matters.**

The merger involves the combination of CIENA with a private company with limited operating history and is a complex transaction. Among the risks the merger involves are risks of successful integration, potential liabilities that may be incurred as a result of the merger, tax consequences, securities law matters and accounting treatment.

Successful integration involves numerous risks, including:

assimilating WaveSmith's technology and product offerings, which may be more difficult than anticipated because the technology is very complex;

coordinating research and development efforts, which may involve unexpected problems;

diversion of management attention from business matters to integration issues;

identifying and retaining key personnel which may be difficult in the combined company;

integrating accounting, engineering, information technology and administrative systems which may be unexpectedly difficult or costly;

making significant cash expenditures that may be required to retain personnel, eliminate unnecessary resources and integrate the business;

maintaining uniform standards, controls, procedures and policies which may be harder than we anticipate and interfere with efficient administration of the combined company; and

changes in the businesses as a result of the merger that impair relationships with employees, customers or vendors.

In addition, as a result of the merger, CIENA will succeed to any liabilities of WaveSmith now existing or arising out of WaveSmith's businesses prior to closing, including unknown liabilities. These liabilities may include liabilities to customers, suppliers or employees, as well as potential liabilities that can arise from intellectual property disputes.

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The merger also involves complex tax, securities law and accounting issues, some of which entail risks that may affect the combined company or the former WaveSmith stockholders. For instance, while the federal income tax consequences of the merger are the subject of opinions of counsel and are discussed below in Federal Income Tax Consequences, CIENA will not request a ruling from the Internal Revenue Service as to the tax consequences of the merger, and opinions of counsel are not binding on the IRS or the courts. There is some uncertainty as to whether obtaining the agreements of stockholders to vote in favor of the merger prior to filing a registration statement with the SEC complies with the registration requirements of the Securities Act. While the parties believe that the merger will result in the federal income tax consequences described herein, and that the merger has been and will be effected in compliance with applicable securities and other laws, there can be no assurance that this is the case. CIENA will also be required to make estimates of the fair market value of certain acquired assets and liabilities which will depend on predictions about future developments. If these predictions are incorrect CIENA may be required to record adjustments to its financial statements in the future.

Failure to overcome these risks or any other problems encountered in connection with the merger could have a material adverse effect on CIENA's business, results of operations and financial condition.

### **The current telecommunications industry downturn could continue to adversely affect the revenues, gross margins and expenses of the combined company.**

The revenues and gross margins of the combined company will depend significantly on the overall demand for telecommunications equipment. Continued weak demand for telecommunications equipment of CIENA and WaveSmith caused by the ongoing economic downturn may result in decreased revenues for the combined company. The downturn has contributed to revenue declines during recent quarters, as well as a lowered revenue outlook for both companies. It has also caused both companies to take restructuring actions and contributed to writedowns to reflect the impairment of certain assets. There could be more of these adverse effects. If the combined company cannot realign its costs relative to its revenues in response to economic conditions and competitive pressures, its margins could be adversely affected.

### **WaveSmith common stockholders may be required to bear the market risk for income taxes due as a result of the merger of WS Contract Corp. into WaveSmith.**

As a result of the merger of WS Contract Corp. into WaveSmith immediately prior to the merger of WaveSmith into CIENA, the value of the WaveSmith common stock will be increased, resulting in WaveSmith common stockholders receiving a greater number of shares of CIENA common stock pursuant to the merger than such stockholders would have received if the merger of WS Contract Corp. into WaveSmith had not occurred. Although the matter is not free from doubt, CIENA and WaveSmith believe that the additional value received by the WaveSmith common stockholders, as a result of the increased value of the WaveSmith common stock, should be taxed to the WaveSmith common stockholders as ordinary income, as discussed below, under the heading The Merger Federal Income Tax Consequences. Accordingly, the WaveSmith common stockholders may be required to recognize the ordinary income attributable to the merger of WS Contract Corp. into WaveSmith, even though they may not be able to satisfy this liability by immediately selling the shares of CIENA common stock received in the merger with CIENA. If the value of the additional shares of CIENA common stock declines between the effective time of the merger of WS Contract Corp. and WaveSmith and the date such shares are sold, such sale will result in a capital loss in certain circumstances. The ability to offset capital losses against ordinary income is limited. For a further discussion of the federal income tax consequences of these transactions, see The Merger Federal Income Tax Consequences.

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**FORWARD-LOOKING STATEMENTS**

Some of the statements contained, or incorporated by reference, in this proxy statement/prospectus discuss future expectations, contain projections of results of operations or financial condition or state other forward-looking information. Those statements are subject to known and unknown risks, uncertainties and other factors that could cause the actual results to differ materially from those contemplated by the statements. The forward-looking information is based on various factors and was derived using numerous assumptions. In some cases, you can identify these so-called forward-looking statements by words like may, will, should, expects, plans, anticipates, believes, estimates, predicts, continue or the negative of those words and other comparable words. You should be aware that those statements only reflect our predictions. Actual events or results may differ substantially. Important factors that could cause our actual results to be materially different from the forward-looking statements are disclosed under the heading Risk Factors beginning on page 9 and throughout this proxy statement/prospectus.



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**THE SPECIAL MEETING OF WAVESMITH NETWORKS, INC. STOCKHOLDERS**

**General**

WaveSmith is furnishing this proxy statement/prospectus to its stockholders in connection with the solicitation of proxies by the WaveSmith board of directors for use at the special meeting of stockholders of WaveSmith to be held on Wednesday, June 11, 2003, and at any adjournment or postponement thereof. This document is also being furnished to WaveSmith stockholders by CIENA as a prospectus of CIENA in connection with the issuance by CIENA of shares of CIENA common stock as contemplated by the merger agreement.

This document was first mailed to stockholders of WaveSmith on or about May 9, 2003.

**Date, Time and Place**

The special meeting will be held on Wednesday, June 11, 2003 at 10:00 a.m., local time, at the offices of Testa, Hurwitz & Thibault, LLP, 125 High Street, Boston, Massachusetts. WaveSmith's telephone number is (978) 929-9100.

**Purpose of the Special Meeting**

The purpose of the WaveSmith special meeting is to consider and vote upon proposals to:

1. Approve and adopt the Agreement and Plan of Merger, dated as of April 9, 2003, between CIENA Corporation, a Delaware corporation, and WaveSmith pursuant to which WaveSmith will be merged with and into CIENA, with CIENA being the surviving corporation;
2. To approve the payments to Thomas Burkardt, John Burnham, Robert Dalias, Robert Doucette, Francis Fiorillo, Pamela Nelson, John O Hara, Robert O Neil, James Philippou, Michael Regan, Gregg Savage and Gary Styskal of amounts that would otherwise result in parachute payments under Section 280G of the Internal Revenue Code of 1986;
3. Grant the WaveSmith board of directors discretionary authority to adjourn the special meeting to solicit additional votes for approval and adoption of the matters being considered at the meeting; and
4. Consider and act upon any other matter which may properly come before the special meeting.

**Record Date and Voting**

Holders of record of shares of WaveSmith common stock and preferred stock at the close of business on May 7, 2003, referred to in this proxy statement/prospectus as the record date, are entitled to notice of and to vote at the WaveSmith special meeting. On the record date, there were outstanding

79,663,130 shares of common stock,

185,000 shares of series A preferred stock,

9,015,000 shares of series A-1 preferred stock,

2,353,370 shares of series B preferred stock,

33,333,331 shares of series B-1 preferred stock and

92,963,301 shares of series C preferred stock.

Each share of common stock is entitled to 1 vote on each matter brought properly before the meeting. Each share of preferred stock is entitled to a number of votes equal to the number of shares of common stock into which such share of preferred stock may be converted into

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pursuant to WaveSmith certificate of incorporation. Each share of series A preferred stock is entitled to 2 votes for each matter brought properly before the meeting. Each share of series A-1 preferred stock is entitled to 3.51667 votes for each matter brought properly before the meeting. Each share of series B preferred stock is entitled to 1 vote for each

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matter brought properly before the meeting. Each share of series B-1 preferred stock is entitled to 2.4 votes for each matter brought properly before the meeting. Each share of series C preferred stock is entitled to 1 vote for each matter brought properly before the meeting. However, as described below, approval of the merger requires special votes of preferred stockholders.

Generally, the representation, in person or by properly executed proxy, of the holders of a majority of all the shares of capital stock issued and outstanding and entitled to vote at the WaveSmith special meeting is necessary to constitute a quorum at the WaveSmith special meeting. In connection with the separate vote by the series A and series A-1 preferred stock, series B and series B-1 preferred stock and series C preferred stock, one-third of the outstanding shares of such class or classes of capital stock, present in person or represented by proxy, shall constitute a quorum entitled to take action at the WaveSmith special meeting. If you sign and send in your proxy card and do not indicate how you want to vote, it will be voted in favor of approval of the merger and the agreement and plan of merger and in favor of the other proposals.

Under Delaware law and the charter documents of WaveSmith, approval of the merger and the agreement and plan of merger requires the affirmative vote of:

a majority of the outstanding shares of WaveSmith's common stock and preferred stock, voting as a single class on an as-converted basis;

a majority of the outstanding shares of WaveSmith's series A and series A-1 preferred stock, voting together as a single class on an as-converted basis;

60% of the outstanding shares of WaveSmith's series B and series B-1 preferred stock, voting together as a single class on an as-converted basis; and

75% of the outstanding shares of WaveSmith's series C preferred stock, voting as a separate class on an as-converted basis.

In order to ensure that certain payments made to certain current and former directors, officers and employees of WaveSmith are not treated as parachute payments, the affirmative vote of more than 75% of the voting power of all outstanding capital stock of WaveSmith (other than stock held by the affected persons) is required to approve these payments. Abstentions from voting identified as such on the proxy card are treated as present or represented for purposes of determining the presence or absence of a quorum at the special meeting. However, abstentions will have the same effect as votes against the merger and the proposal regarding the parachute payments.

As of the close of business on the record date for the special meeting, WaveSmith directors and executive officers (and their respective affiliates) held approximately 38,936,610 shares of WaveSmith common stock and 145,165,518 shares of WaveSmith preferred stock on an as converted basis or approximately 48.9% and 70.0% of the shares of WaveSmith common stock and preferred stock entitled to vote at the special meeting, excluding options and warrants to purchase WaveSmith common stock or preferred stock which were unexercised as of the record date. In addition, directors, executive officers and stockholders of WaveSmith beneficially owning

182,175,585 shares, representing 63.5% of WaveSmith's common stock and preferred stock, voting as a single class on as as-converted basis,

28,203,689 shares, representing 87.9% of WaveSmith's series A and series A-1 preferred stock, together on an as-converted basis,

66,666,661 shares, representing 81.0% of WaveSmith's series B and series B-1 preferred stock, together on an as-converted basis, and

66,961,835 shares, representing 72.0% of WaveSmith's series C preferred stock, voting as a separate class on an as-converted basis,

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have entered into agreements, pursuant to which they have agreed to vote their WaveSmith shares in favor of adoption and approval of the merger agreement and approval of the merger, against any proposal made in opposition to, or in competition with, the merger, and against any proposal intended to impede, frustrate, prevent or nullify the merger, or that could reasonably be expected to change the voting rights of the capital stock. In addition, a majority of the stockholders that have signed a voting agreement have granted CIENA an option to purchase its shares at the merger price, for cash, in the event the merger agreement is terminated by WaveSmith to allow WaveSmith to pursue an offer for WaveSmith that its board considers superior. See the section entitled **The Merger Interests of Directors and Officers of WaveSmith in the Merger**. As of the close of business on the record date, CIENA, through its wholly-owned subsidiary, MultiWave Investment, Inc., owned 16,666,667 shares of WaveSmith series C preferred stock, representing approximately 17.9% of WaveSmith series C preferred stock, which it intends to vote in favor of the merger and approval of the merger agreement and in favor of approval of the payments that would otherwise result in parachute payments. As of the close of business on the record date, no officer or director of CIENA owned shares of WaveSmith common or preferred stock.

### **Voting of Proxies at the Special Meeting and Revocation of Proxies**

All shares of WaveSmith capital stock that are entitled to vote and are represented at the WaveSmith special meeting by properly executed proxies received prior to or at such meeting, and not revoked, will be voted at such meeting in accordance with the instructions indicated on such proxies. If no instruction is indicated, such proxies will be voted **FOR** approval and adoption of the merger and the agreement and plan of merger, **FOR** approval of the payments that would otherwise result in parachute payments and in favor of the other proposals.

The WaveSmith board of directors does not know of any matters other than those described in the notice of the WaveSmith special meeting that are to come before such meeting. If any other matters are properly presented at the WaveSmith special meeting for consideration, the persons named in the enclosed proxy card and acting thereunder generally will have discretion to vote on such matters in accordance with their best judgment.

Any proxy given pursuant to the solicitation may be revoked by the person giving it at any time before it is voted. Proxies may be revoked by

filing with Gregg Savage, the Secretary of WaveSmith, at or before the taking of a vote at the WaveSmith special meeting, a written notice of revocation bearing a later date than the proxy,

duly executing a later dated proxy relating to the same shares and delivering it to Mr. Savage before the taking of the vote at the WaveSmith special meeting, or

attending the WaveSmith special meeting and voting in person (although attendance at the WaveSmith special meeting will not in and of itself constitute a revocation of a proxy).

Any written notice of revocation or subsequent proxy should be sent to WaveSmith, Inc., 35 Nagog Park, Acton, MA 01720, Attn: Gregg Savage, Secretary, or hand-delivered to Mr. Savage at or before the taking of the vote at the WaveSmith special meeting.

WaveSmith will be soliciting proxies on its own behalf. WaveSmith intends to solicit proxies through this proxy statement/prospectus and directly through its directors, officers and regular employees. Solicitation of some stockholders may be made in person or by mail, telephone, facsimile transmission or other means of electronic transmission.

WaveSmith will bear its own expenses in connection with the solicitation of proxies for its special meeting of stockholders, except that CIENA will bear all printing and filing costs and expenses, other than attorneys' and accountants' fees and expenses of WaveSmith. CIENA will bear all other expenses incurred in connection with the preparation of this document and the preparation and filing of the registration statement of which this document forms a part.

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### **Quorum and Abstentions**

A majority of all shares of WaveSmith common stock and preferred stock outstanding as of the record date and one-third of each class or classes of preferred stock entitled to a special vote outstanding as of the record date, represented in person or by proxy, constitutes a quorum for the transaction of business at the special meeting. Broker non-votes and shares held by persons abstaining will be counted in determining whether a quorum is present at the WaveSmith special meeting. WaveSmith has appointed Gregg Savage, its Secretary, to function as the inspector of elections of the special meeting. The inspector of elections will ascertain whether a quorum is present, tabulate votes and determine the voting results on all matters presented to WaveSmith stockholders at the special meeting. If a quorum is not present, or fewer shares of WaveSmith common and preferred stock are voted for the adoption and approval of the merger agreement than the required amount to approve the merger vote at the special meeting in person or by proxy, if stockholders approve the grant of discretionary authority to the WaveSmith board of directors to adjourn the meeting, the special meeting may be postponed or adjourned for the purpose of allowing additional time for obtaining additional proxies or votes, and, if stockholders approve the grant of discretionary authority to the WaveSmith board of directors to adjourn the meeting, at any subsequent reconvening of the special meeting, all proxies will be voted in the same manner as the proxies would have been voted at the original convening of the special meeting, except for any proxies that have been effectively revoked or withdrawn prior to the subsequent reconvening of the special meeting.

If you submit a proxy that indicates an abstention from voting in all matters, your shares will be counted as present for the purpose of determining the existence of a quorum at the special meeting, but they will not be voted on any matter at the applicable special meeting. Consequently, your abstention will have the same effect as a vote against the proposal to adopt and approve the merger agreement and to approve the merger and against approval of the payments that would otherwise result in parachute payments.

### **Board of Directors Recommendation**

The WaveSmith board of directors has unanimously determined that the merger agreement is advisable, and that the terms of the merger agreement and the merger are fair to and in the best interests of WaveSmith and its stockholders. Accordingly, the WaveSmith board of directors has unanimously approved the merger agreement and unanimously recommends that stockholders vote **FOR** adoption and approval of the merger agreement and approval of the merger, as well as **FOR** approval of the grant of discretionary authority to adjourn the meeting to solicit additional votes if necessary. In considering such recommendations, WaveSmith stockholders should be aware that some WaveSmith directors and officers have interests in the merger that are different from, or in addition to, those of WaveSmith stockholders, and that WaveSmith and CIENA have provided indemnification arrangements to directors and officers of WaveSmith. See *The Merger and Related Transactions Interests of Directors and Officers of WaveSmith in the Merger*.

The WaveSmith board of directors is also submitting to stockholders a proposal to approve certain payments that would otherwise result in parachute payments.

**The matters to be considered at the special meeting are of great importance to the stockholders of WaveSmith. Accordingly, WaveSmith stockholders are urged to read and carefully consider the information presented in this document and to complete, date, sign and promptly return the enclosed proxy in the enclosed, postage-paid envelope.**

**WaveSmith's stockholders should not send any stock certificates with their proxy cards. A transmittal form with instructions for the surrender of WaveSmith common stock certificates will be mailed to WaveSmith stockholders promptly following completion of the merger. For more information regarding the procedures for exchanging WaveSmith stock certificates for CIENA stock certificates, see *The Merger and Related Transactions The Merger Agreement Exchange of WaveSmith Stock Certificates for CIENA Stock Certificates*.**

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**THE MERGER**

**General**

The boards of directors of CIENA and WaveSmith have each approved the merger agreement, which provides for the merger of WaveSmith with and into CIENA, with CIENA being the surviving corporation of the merger. Each share of WaveSmith common stock and WaveSmith series A preferred stock, series A-1 preferred stock, series B preferred stock, series B-1 preferred stock and series C preferred stock outstanding immediately prior to the merger will be converted into the right to receive shares of CIENA common stock. The shares of WaveSmith common stock and WaveSmith preferred stock will be converted into a number of shares of CIENA common stock in accordance with the formulas specified in the merger agreement, as described under Terms of the Merger Agreement and Related Transactions Conversion of WaveSmith Preferred Stock and Common Stock; Treatment of Options and Warrants. Fractional shares of CIENA common stock will not be issued in connection with the merger, and WaveSmith stockholders otherwise entitled to a fractional share will be paid in cash for the fractional share, in the manner described under Terms of the Merger Agreement and Related Transactions Exchange of Certificates; Fractional Shares.

**Background of the Merger**

As a regular part of their businesses, CIENA and WaveSmith from time to time have each independently considered opportunities to expand and strengthen their own technology, products, research and development capabilities and distribution channels, including distribution agreements, acquisitions, investments, licenses, development agreements and joint ventures.

Beginning in January 2002, WaveSmith's management, upon instructions from its board of directors, began to seek additional sources of funding for WaveSmith. Members of WaveSmith's management had meetings with numerous strategic and financial investors regarding a potential investment in and/or strategic transaction with WaveSmith.

As a result of these discussions, Company A, a large Nasdaq-listed telecommunications equipment manufacturer, expressed interest in a potential strategic transaction with WaveSmith. During June 2002, representatives of Company A visited WaveSmith's offices several times to conduct a due diligence investigation of WaveSmith and to meet with WaveSmith's management.

On June 5, 2002, at the Supercomm 2002 trade show in Atlanta, Georgia, Emil Savov, CIENA's Senior Director Corporate Development, met with Mike Deskewies, Vice President Business Development for Équipe Communications Corporation, a manufacturer of core multiservice switches. CIENA had previously announced both a strategic investment in Équipe and a worldwide reseller agreement between CIENA and Équipe. Mr. Deskewies suggested to Mr. Savov that it would be useful for CIENA to meet with WaveSmith in order to explore possible synergies and complementary product offerings.

On June 6, 2002, Mr. Savov and Jeff Wabik, CIENA's Vice President Systems Architecture, met with Brian Fitzgerald, then WaveSmith's Executive Vice President for Worldwide Sales, and Chad Dunn, then WaveSmith's Director of Product Management. On the same day, Stephen Alexander, CIENA's Senior Vice President and Chief Technology Officer, and Stephen Kaye, CIENA's Vice President Corporate Development, met with Messrs. Fitzgerald and Dunn. The topics of discussion at both meetings included WaveSmith's products and technology, value proposition, capital requirements and financing activities, as well as the potential for cooperation between the two companies and a possible strategic investment in WaveSmith by CIENA.

On June 11, 2002, CIENA and WaveSmith entered into a nondisclosure agreement.

On June 12, 2002, after discussions with several investment banking firms, WaveSmith engaged the investment banking firm Thomas Weisel Partners LLC ( TWP ) to act as its financial advisor to assist with negotiations with Company A and to identify additional potential sources of capital and/or strategic partners for WaveSmith.

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Also on June 12, 2002, Robert Dalias, then WaveSmith's President and Chief Executive Officer, had conversations with Mr. Savov regarding a potential strategic relationship between WaveSmith and CIENA. Mr. Savov indicated that CIENA may be interested in such a relationship. The discussion was focused on an investment in WaveSmith by CIENA and a commercial agreement between the parties giving CIENA rights to distribute WaveSmith products.

In late June 2002, Company A informed WaveSmith that it had decided to end discussions regarding a potential strategic transaction between the companies.

During the period between June 2002 and September 2002, TWP contacted approximately seven potential strategic partners on behalf of WaveSmith including several publicly traded telecommunications equipment manufacturers. In addition, members of WaveSmith's management contacted approximately 20 potential financial investors and/or strategic partners.

On June 20, 2002, Mr. Wabik visited WaveSmith's offices in Acton, Massachusetts, to conduct technical due diligence on WaveSmith's products and technology, and met with Mr. Dunn and Jim Donovan, WaveSmith's Director of Systems Engineering.

On June 26, 2002, a meeting took place in Columbia, Maryland between representatives of CIENA and WaveSmith. CIENA's team consisted of Gary Smith, CIENA's President and Chief Executive Officer, Steve Chaddick, CIENA's Senior Vice President and Chief Strategy Officer, Joseph R. Chinnici, CIENA's Senior Vice President Finance and Chief Financial Officer, and Mr. Kaye. WaveSmith was represented by Mr. Dalias, John O'Hara, then WaveSmith's Vice President of Engineering and Mr. Fitzgerald. The parties discussed their respective products technology, business strategies and the potential for cooperation between the two companies.

On June 28, 2002, Messrs. Kaye and Savov met with Messrs. Dalias, O'Hara, Fitzgerald and Donovan at WaveSmith's offices, to conduct business due diligence on WaveSmith and to explore further the possibility of a CIENA investment in WaveSmith.

Over the next few weeks, Mr. Kaye performed additional due diligence by contacting several customer references provided by WaveSmith, and the parties continued to discuss the specifics of a potential business arrangement.

On July 11, 2002, CIENA sent WaveSmith a draft of a non-binding letter of intent with respect to a proposed equity investment in WaveSmith's next round of funding and certain special rights for CIENA surrounding such investment. The letter of intent also provided general terms for a worldwide reseller agreement, which would give CIENA the right to market, sell and support WaveSmith's products into larger carrier accounts. Over the next several weeks, CIENA and WaveSmith negotiated the terms of the letter of intent.

On July 30 and 31, 2002, Mr. Wabik performed additional technical due diligence on WaveSmith's products and technology at WaveSmith's offices.

On July 30, 2002, WaveSmith received a letter of intent from Company B, an outside financial investor, to lead WaveSmith's next round of financing.

On July 31, 2002, at a meeting of WaveSmith's board of directors, the directors discussed and evaluated the proposed strategic relationship with CIENA. The board of directors approved the CIENA letter of intent as negotiated and instructed management to execute the CIENA letter of intent. The board members also discussed the letter of intent from Company B and instructed management to pursue negotiations with Company B.

From July 30, 2002 through August 14, 2002, members of WaveSmith's management, upon instructions from the board of directors, attempted to negotiate the terms of the letter of intent with Company B, particularly Company B's valuation of WaveSmith, which WaveSmith's management and board of directors viewed as unacceptable.

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On July 31, 2002, CIENA and WaveSmith entered into the letter of intent regarding the proposed financing and the strategic relationship.

Also on July 31, 2002, Mr. Dalias visited with members of management from Company C, a Nasdaq-listed telecommunications equipment manufacturer, regarding a potential acquisition of WaveSmith. Mr. Dalias reported Company C's interest to each of the members of WaveSmith's board of directors. The members of the board of directors concluded that Company C's valuation of WaveSmith was not acceptable.

On August 12, 2002, Mr. Dalias informed Company C that WaveSmith's board of directors did not support a potential acquisition of WaveSmith on the terms discussed. No further discussions between WaveSmith and Company C occurred until March 2003.

On August 14, 2002, Company B informed WaveSmith's management that it was not willing to proceed with an investment in WaveSmith at any valuation greater than the initial valuation it had proposed. No further discussions between WaveSmith and Company B occurred thereafter.

Throughout August and September, 2002, CIENA and WaveSmith directly, and indirectly through their respective counsel, Hogan & Hartson L.L.P. for CIENA and Testa, Hurwitz & Thibault, LLP for WaveSmith, had numerous conversations and exchanged drafts of the financing agreements and related agreements and the reseller agreement. The parties ultimately agreed that, in connection with CIENA's equity investment in WaveSmith's third round of funding, CIENA would be entitled to the following: (i) observer status on the WaveSmith board of directors; (ii) notification rights in the event that a third party made an offer to acquire WaveSmith; (iii) the right to a fee of 5% of the total consideration paid to WaveSmith in the event that WaveSmith agreed to be acquired by a third party prior to July 1, 2003; and (iv) the right to acquire WaveSmith during the period beginning on July 1, 2003 and ending on March 31, 2004 for \$150,000,000, to be paid upon closing of the acquisition, plus an earn out payment equal to two times the gross profit attributable to sales of WaveSmith's products for the 12 month period following the close of the acquisition. In connection therewith, the parties agreed that stockholders holding at least 80% of WaveSmith's total voting securities would immediately execute stockholder option agreements in favor of CIENA, pursuant to which they would agree to sell their shares to CIENA in the event that CIENA exercised its option after July 1, 2003 to acquire WaveSmith.

On September 10, 2002, the WaveSmith board of directors met to discuss the proposed terms of the financing and the strategic relationship with CIENA. The board of directors also discussed the efforts of management and TWP in connection with locating other potential sources of financing and/or strategic partners for WaveSmith. The board of directors authorized and instructed management to proceed with the financing and the strategic relationship with CIENA on the terms that were negotiated.

On September 18, 2002, WaveSmith and CIENA executed a series C preferred stock purchase agreement and related agreements and a worldwide reseller agreement. CIENA also executed documents with several of WaveSmith's principal stockholders giving CIENA an option to purchase their shares in the event that CIENA exercised its option after July 1, 2003 to acquire WaveSmith.

On October 21, 2002, WaveSmith issued a press release announcing the closing of the series C preferred stock financing.

On November 1, 2002, Thomas M. Burkardt, WaveSmith's recently appointed Chairman, President and Chief Executive Officer, visited CIENA's offices in Linthicum, Maryland, and met with Messrs. Smith, Kaye and Savov and Jim Collier, CIENA's Vice President North American Sales, to introduce himself and discuss the parties' business arrangement.

On January 28, 2003, Mr. Smith and Mr. Burkardt met at WaveSmith's offices to discuss the status of the parties' business relationship, the status of specific customer accounts, and WaveSmith's projected capital requirements. On the same date, Mr. Smith also met with Rob Soni, a former member of the WaveSmith board of directors and then a partner with Bessemer Venture Partners, one of WaveSmith's lead investors, to discuss the business arrangement between CIENA and WaveSmith. Also on January 28,



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2003, Mr. Smith had dinner with Robert O. Neil, WaveSmith's new Vice President of Worldwide Sales, Michael Regan, WaveSmith's Vice President of Engineering, and Mr. Donovan.

On February 17, 2003, Mr. Burkardt contacted Mr. Smith to discuss the status of the parties' existing business arrangement, WaveSmith's projected capital requirements and topics pertaining to joint customers. During the call, Mr. Burkardt inquired as to whether CIENA would be interested in pursuing a business combination with WaveSmith in advance of July 1, 2003.

On February 18, 2003, Mr. Smith informed Mr. Burkardt that CIENA would be interested in acquiring WaveSmith, provided that the parties could agree on a purchase price. Messrs. Smith and Burkardt agreed that the earn out portion of CIENA's option to acquire WaveSmith was problematic. They also discussed the purchase prices for the transaction. After discussions regarding the capital structure of WaveSmith and the morale of WaveSmith employees, the parties agreed that any transaction would have to contain structural elements intended to provide appropriate incentives for employees of WaveSmith. Mr. Smith then suggested some terms for discussion purposes with WaveSmith's board. Mr. Burkardt informed Mr. Smith that he would discuss the proposal with WaveSmith's board of directors before he could formally respond to Mr. Smith's suggested terms.

On February 20, 2003, Mr. Burkardt had conversations with each of the members of WaveSmith's board of directors regarding his discussions with Mr. Smith.

Over the next three days, Messrs. Smith and Burkardt had several discussions about the purchase price. On February 21, 2003, Messrs. Burkardt and Smith reached a tentative understanding on purchase price. Mr. Smith indicated, however, that the price was subject to completion of CIENA's due diligence. Also on February 21, 2003, WaveSmith's board of directors met to continue discussions regarding the terms of the potential acquisition of WaveSmith by CIENA including the consideration to be paid to WaveSmith stockholders and the structure of the proposed transaction. The board of directors also discussed the status of discussions with other potential acquirers of WaveSmith and the likelihood of receiving additional indications of interest. The board of directors directed Mr. Burkardt to proceed with negotiations with CIENA.

On February 22, 2003, CIENA's legal advisors from Hogan & Hartson commenced a legal due diligence review of WaveSmith, which continued through February 26, 2003.

On February 22, 23 and 25, 2003, WaveSmith's board of directors met with WaveSmith's legal advisors to discuss the status of the negotiations between the parties and the potential structures of the transaction. The board considered that if an agreement for the acquisition of WaveSmith by CIENA was executed but later terminated prior to consummation of the transaction, the business relationship between the parties would be severely damaged. Therefore, the board instructed management to negotiate a provision in the merger agreement providing that if the transaction was not consummated, the existing Reseller Agreement and related agreements with CIENA would terminate.

On February 24, 25 and 26, 2003, a CIENA due diligence team conducted a series of meetings with WaveSmith representatives at a hotel in Massachusetts near WaveSmith's offices and at the offices of Testa, Hurwitz & Thibault in Boston. CIENA representatives at one or more of those meetings included Messrs. Kaye and Chinnici, Russell B. Stevenson, Jr., CIENA's Senior Vice President and General Counsel, Andrew C. Petrik, CIENA's Vice President, Controller and Treasurer, and Lynn Moore, CIENA's Vice President Compensation. WaveSmith representatives at one or more of those meetings included Mr. Burkardt, Mr. O. Neil, Gregg Savage, Chief Financial Officer, Brian Silver, Director of Products & Technology, Steven Kalus, Controller and Kathleen Boyle, Manager Human Resources.

On February 25, 2003, Hogan & Hartson sent to WaveSmith and Testa, Hurwitz & Thibault a first draft of a definitive merger agreement, stockholder voting agreements and related agreements.

On February 26, 2003, Mr. Kaye contacted Mr. Burkardt in the late afternoon and informed him that CIENA had concluded from its due diligence on WaveSmith's revenue prospects that a downward adjustment in the proposed purchase price for WaveSmith might be required. Shortly thereafter, as a

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result of that discussion, Mr. Burkardt requested the cessation of all due diligence activities until he could speak further with Mr. Smith.

On February 28, 2003, at a meeting of WaveSmith's board of directors, Mr. Burkardt provided an update as to the status of discussions with CIENA. The board of directors instructed management to arrange a meeting with CIENA to attempt to resolve the remaining pending issues. The board also instructed management to contact TWP for the purpose of assisting in the identification of other potential partners and to assist in the negotiations with CIENA. In addition, the board instructed management to continue to investigate the interest of other potential strategic partners through their own contacts.

On March 1, 2003, Mr. Smith spoke with Mr. Burkardt and confirmed CIENA's desire to reduce the purchase price.

On March 4, 2003, representatives of TWP had a meeting with Messrs. Kaye, Chinnici and Petrik to discuss the open issues.

On March 6, 2003, at a meeting of WaveSmith's board of directors, Mr. Burkardt reported that CIENA and WaveSmith were still working to resolve open issues. In addition, Mr. Burkardt reported on efforts to locate other parties interested in a strategic transaction with WaveSmith. Mr. Burkardt reported that WaveSmith's financial advisors had contacted several publicly traded telecommunications equipment companies.

During the period from March 6, 2003 to March 28, 2003, WaveSmith management and CIENA management had various meetings to discuss creating more efficiencies under the reseller agreement between the parties.

On March 11, 2003, Messrs. Smith and Burkardt discussed the major substantive issues that had arisen as a result of CIENA's due diligence.

On March 12, 2003, at the regularly scheduled quarterly meeting of the CIENA board of directors, CIENA's senior management provided an update on the status of discussions with WaveSmith regarding a possible business combination, including the strategic and financial reasons for such a combination and the fact that no agreement had been reached as to the purchase price. After discussion, the CIENA board of directors expressed general support for the strategic value of an acquisition of WaveSmith, and authorized management to continue discussions with a view toward reaching agreement on acceptable terms.

On March 14, 2003, Messrs. Smith and Burkardt again spoke about the status of negotiations, and Mr. Burkardt suggested that TWP be provided a further opportunity to explain their analysis of WaveSmith to CIENA.

Starting in mid-March 2003, three other potential transaction partners contacted WaveSmith. Between March 31, 2003 and April 5, 2003, Mr. Burkardt had discussions with each of the three parties that had expressed interest in a strategic transaction with WaveSmith. Of the three, only Company C indicated a firm interest in pursuing an acquisition of WaveSmith. Company C proposed a cash acquisition of WaveSmith for a price lower than CIENA's proposal. During the same time, Messrs. Burkardt, Smith, Chinnici and Savage had various discussions regarding the open issues relating to the transaction between CIENA and WaveSmith.

On March 21 and 23, 2003, Messrs. Smith and Burkardt had further discussions of the purchase price for the transaction, as well as the potential for a reduction in the liquidation preferences for WaveSmith's preferred stockholders to enable employees holding common stock to receive a greater portion of the acquisition price. On March 31, 2003, the parties reached a tentative agreement regarding the purchase price for the transaction and a reduction in the existing liquidation preferences for WaveSmith's preferred stockholders, contingent on successful conclusion of the negotiations of the merger agreement.

On March 31, 2003, at a meeting of WaveSmith's board of directors, Mr. Burkardt outlined the existing terms of CIENA's acquisition proposal. The board also discussed CIENA's desire to provide sufficient incentives to retain employees. Mr. Burkardt also reported that three other telecommunications

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equipment vendors had recently expressed interest in discussing a strategic transaction with WaveSmith, one of which was Company C. WaveSmith's board instructed management to continue negotiating definitive documentation with CIENA while also exploring the possibility of alternative transactions.

On April 1, 2003, WaveSmith caused Testa, Hurwitz & Thibault to send to CIENA comments on the draft of the merger agreement and related agreements on behalf of WaveSmith. Also on April 1, 2003, Mr. Burkardt received a telephone call from Mr. Smith to discuss the status of outstanding issues and the desire to complete the remaining due diligence and contract negotiations as soon as possible. Mr. Smith informed Mr. Burkardt that CIENA was comfortable with an acquisition price in CIENA common stock that valued WaveSmith at \$170 million and the parties agreed that the structure of the transaction should reflect appropriate incentives for WaveSmith employees.

Following this discussion, until the definitive merger agreement was signed on April 9, 2003, the parties and their respective legal advisors had numerous discussions regarding due diligence matters and conducted negotiations of the definitive terms of the transaction, including the terms of the merger agreement and the escrow agreement. Throughout these discussions, representatives of CIENA reiterated CIENA's condition that directors of the Company, and their affiliates, should execute voting agreements in substantially the form of the stockholder agreements.

On April 6, 2003, the CIENA board of directors held a meeting by teleconference, at which CIENA's senior management team presented the proposed terms of the merger. At the conclusion of the meeting, the CIENA board approved the terms of the merger and authorized management to complete and execute the merger agreement and related agreements.

Also on April 6, 2003, at a meeting of WaveSmith's board of directors, Mr. Burkardt reported on WaveSmith's discussions with the three parties that had expressed interest in a strategic transaction with WaveSmith. Mr. Burkardt informed the board of the proposal made by Company C. The board of directors concluded that Company C's proposal was inferior and instructed Mr. Burkardt to reject the proposal by Company C unless the consideration could be increased. Mr. Burkardt then updated the board on the negotiations with CIENA including the discussions regarding providing adequate incentives to WaveSmith employees. The members of the board of directors agreed that revising the company's capital structure so that additional consideration from the transaction would be paid to WaveSmith's common stockholders was acceptable to the Company. WaveSmith's legal counsel explained that this would require a reduction in the liquidation preferences of WaveSmith's preferred stock. To avoid the uncertainty and delay associated with solicitation of votes to accomplish a charter amendment during the period between execution of the merger agreement and the closing of the transaction, the most efficient means to effect the desired changes in WaveSmith's charter was through a statutory merger with WS Contract Corp., a wholly owned subsidiary of WaveSmith, which could be approved by directors and stockholders prior to execution of a merger agreement with CIENA.

On April 7, 8 and 9, 2003, representatives of CIENA and WaveSmith finalized the merger agreement and related agreements.

On April 9, 2003, at a meeting of WaveSmith's board of directors, WaveSmith's board of directors reviewed the status of the negotiations with CIENA and the terms of the definitive merger agreement. After the review, the board determined that the terms of the merger and the merger agreement and the transactions contemplated thereby were fair to, and in the best interest of WaveSmith and its stockholders, and the directors unanimously recommended the approval of the merger, the adoption of the merger agreement and the transactions contemplated thereby and the merger of WaveSmith and WS Contract Corp. to the stockholders of WaveSmith.

The merger agreement and related documents, including the stockholder agreements, were executed on the afternoon of April 9, 2003.

On April 9, 2003, CIENA and WaveSmith issued a joint press release announcing the signing of the merger agreement.

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### **CIENA's Reasons for the Merger**

#### *Strategic Fit*

Optical networking products of the type currently offered by CIENA perform at the so-called Physical Layer, or Layer 1, of the Open System Interconnection Reference Model (OSI), the set of standards that allow for networking communications. CIENA's transport products essentially provide the means for sending and receiving data across physical devices. These products operate in both the core portion of a network and the metro portion of a network (which carries signals within metropolitan regions), which is closer to the edge of a network.

The recent general economic climate, and that of the telecommunications industry in particular, including consolidation and reduced spending by carriers, has resulted in dramatically reduced demand for the type of products currently manufactured by CIENA and its competitors. In response, over the past several months CIENA has embarked upon a corporate strategy designed to increase its addressable market and, thus, its opportunities to derive revenue. One element of this strategy is to move up into Layer 2 of the OSI model, the Data Link Layer where information is converted into packets and where errors, flow control and frame synchronization are handled. A second element is to move out from the core further toward the edge of a network, where the majority of carrier spending is expected to occur in the near future. CIENA has also determined to increase its sales efforts on the most financially stable service providers—those of the regional Bell operating companies (RBOCs), in the U.S. and the PTTs and other incumbent operators in Europe and Asia.

CIENA believes that a combination of its next-generation Layer 1 optical networking equipment, and WaveSmith's Layer 2 multiservice data switching, fits with CIENA's strategy. It will enable CIENA to broaden its product portfolio into Layer 2 and will strengthen its overall value proposition to current and potential incumbent carrier customers. WaveSmith's multiservice switches sit at the edge of a carrier's network. They are based on the widely-deployed ATM (Asynchronous Transfer Mode) and frame relay standards and also provide an easy migration path to next-generation technologies such as IP/MPLS (multiprotocol label switching). This migration strategy enables carriers to build on their existing infrastructure and provide revenue-generating services in an efficient and cost-effective way without having to replace legacy network products.

CIENA calls the network architecture created by its products LightWorks. This architecture is designed to dramatically simplify a carrier's network by reducing the number of network elements. As the WaveSmith DN product family is integrated into CIENA's LightWorks portfolio, CIENA will offer a unified, automated solution that converges Layer 1 and Layer 2, evolving networks so that carriers can address the enterprise data services market efficiently and profitably. CIENA's existing reseller relationship with WaveSmith has allowed it to begin these such integration efforts already.

In particular, CIENA believes that the following benefits will result from the merger:

**Product Compatibility.** In today's networks, CIENA's products perform transport and circuit switching functions which reside in Layer 1 of the OSI model. WaveSmith's products, on the other hand, perform packet switching and aggregation functions typically associated with Layer 2 of the OSI model. In this environment, CIENA's products generally create the infrastructure over which data services travel, while WaveSmith's products route the data traffic and adapt data services (such as ATM or frame relay) to be carried over the Layer 1 infrastructure.

These two layers are interconnected in most networks via standardized SONET (synchronous optical network) interfaces. Both CIENA and WaveSmith utilize these interfaces for interconnection, so the two companies' products can be easily interconnected to provide data services. Consequently, it is a simple matter to integrate CIENA's and WaveSmith's products to reduce the cost of building a network to provide data services.

Today, the Layer 1 and Layer 2 portions of the network are controlled independently. CIENA is a technology leader in automating the operation of the Layer 1 part of the network. Combining

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CIENA's portfolio with WaveSmith's products presents the opportunity to also consolidate the operation of these two layers of the network and automate the delivery of data services.

**Customer Relationships.** CIENA believes that WaveSmith has developed valuable relationships with RBOCs, as evidenced by its recent announcement of the selection of WaveSmith's DN product family by SBC. CIENA believes that these relationships will enhance CIENA's ability to compete for business from RBOCs and complement CIENA's existing sales and distribution channels. Conversely, CIENA believes it will be able to leverage its existing sales channels and customer relationships to offer the WaveSmith products to a wider range of customers than WaveSmith currently reaches, including large incumbent operators in Europe and Asia, where WaveSmith currently has no presence.

**Expand Addressable Market.** CIENA believes that the proposed merger will expand its addressable market. CIENA currently has no product offering in the multi-service switch market. WaveSmith's DN is a leading platform in this market and will give CIENA entry into this multi-billion dollar market.

**Broader Scope.** CIENA believes that the current telecommunications environment makes vendors with a broad portfolio more attractive to large incumbent carriers than companies with point solutions. In an effort to simplify their networks and reduce operating expenses, large operators are reducing the number of equipment vendors, forming strong relationships with a few large, strategic vendors. CIENA believes that the acquisition of WaveSmith will strengthen its position with major operators by allowing it to offer a more complete portfolio of products covering a larger portion of network operators' equipment needs.

### ***Additional Reasons for the Merger***

The strategic fit with WaveSmith represents the principal rationale for the merger. However, the following factors, each of which CIENA took into account in evaluating the proposed merger, also support this rationale and enhance the likelihood of achieving the full potential of the combination:

**Competitive Advantage.** The WaveSmith DN product family has been developed using the most current generation of hardware and software technology, resulting in a platform that offers superior price and performance characteristics as compared to the older generation products offered by more established vendors. The WaveSmith products have also completed the Telcordia OSMINE Services process for the TIRKS Operations Support System, which is a requirement of most RBOCs before deployment in their networks. Due to the high costs and long time frames associated with OSMINE testing, WaveSmith's completion of such testing gives CIENA a competitive advantage at the incumbent carrier accounts.

**Cultural Fit.** CIENA and WaveSmith share a common heritage as entrepreneurial companies as well as a common vision of distributed network intelligence. Both companies have established reputations for being flexible, innovative, agile and customer-focused.

**Positive Business Model Effect.** The addition of WaveSmith's data switches to CIENA's product portfolio should have a positive effect on CIENA's business model. Data switches such as those offered by WaveSmith typically carry higher margins than the optical networking equipment in CIENA's existing product portfolio.

**Strong Engineering Teams.** CIENA believes that WaveSmith has a strong engineering team that would add significantly to CIENA's engineering resources and enhance its ability to continue to innovate and rapidly bring new products to market.

In view of the variety of factors considered in connection with its evaluation of the merger, the CIENA board of directors did not quantify or otherwise assign relative weights to the factors considered in reaching its conclusions. In addition, individual members of the CIENA board of directors may have given

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different weights to different factors. However, on an overall basis, the CIENA board of directors concluded that the factors favoring the merger outweigh the countervailing factors.

For the strategic reasons set forth above, after consultation with CIENA's senior management and its advisors and consideration of the terms and conditions of the merger agreement and the transactions contemplated by the merger agreement, the CIENA board of directors determined that the merger agreement and the merger are in the best interests of CIENA and its stockholders.

### **Recommendation of the WaveSmith's Board of Directors and Reasons for the Merger**

At a special meeting held on April 9, 2003, the WaveSmith board of directors unanimously approved the terms and conditions of the agreement and plan of merger and the transactions contemplated thereby, including the merger. In evaluating the agreement and plan of merger and the transactions contemplated thereby, and deciding to approve them, the WaveSmith board of directors considered a number of factors, including the following:

the consideration being offered by CIENA for shares of WaveSmith's capital stock;

WaveSmith's prospects if it were to remain independent, including:

- \* the resources necessary to insure WaveSmith's future growth;
- \* WaveSmith's ability to raise the additional capital necessary for continuing operations and to expand its business, especially in light of the fact that WaveSmith's operating plan indicated a need for additional investment capital in the near term and the investment terms for private companies like WaveSmith have not been favorable;
- \* CIENA's existing options to acquire a significant percentage of WaveSmith's capital stock at any time between July 1, 2003 and March 31, 2004, thus creating a challenge for WaveSmith to raise additional investment capital in that time period;
- \* WaveSmith's ability to market efficiently, sell to and support its existing customers while remaining an independent, private company;
- \* WaveSmith's ability to independently develop the necessary infrastructure to attract and support larger customers including regional Bell operating companies (RBOCs) critical to WaveSmith's long-term viability even with CIENA as a strategic partner;
- \* the challenge faced by WaveSmith of dedicating significant resources to growth while at the same time focusing on achieving profitability; and
- \* WaveSmith's ability to effectively compete with large telecommunication equipment companies operating in its market.

the possible alternatives to the CIENA transaction, including:

- \* the possibility of continuing to operate WaveSmith as an independent entity and the resulting strain on WaveSmith's resources such an option would present;
- \* the possibility of continuing to seek another strategic partner;
- \* the range of possible benefits to WaveSmith's stockholders of these alternatives;
- \* the timing and likelihood of accomplishing the goal of any of these alternatives; and
- \* the contacts that had been made with potential acquirers and the fact that, although companies with a potential interest in acquiring WaveSmith had been contacted, only discussions with CIENA had advanced beyond preliminary stages.

the strategic value of WaveSmith in the hands of a company with significantly greater financial resources, such as CIENA, which by virtue of its existing customer relationships is well positioned to more optimally exploit WaveSmith's products and technology in the telecommunications carrier

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marketplace and which, as a large corporation, enjoys many other competitive advantages not presently available to WaveSmith;

the ability of the two companies to combine their technological resources to develop new products with increased functionality and bring them to market faster;

the availability to the combined company of greater resources for product marketing and distribution;

the likelihood that CIENA's offer would be completed, in light of the experience, reputation and financial capabilities of CIENA and the terms of the agreement and plan of merger;

the WaveSmith board of directors' belief, based on its assessment of the negotiations, that a more favorable purchase price could not be achieved through continued negotiations with CIENA;

the fact that certain significant stockholders of WaveSmith were willing to support the transaction, thereby increasing the likelihood that the conditions to CIENA's offer would be satisfied;

the fact that the other conditions to CIENA's obligations to consummate the merger were customary and, in the assessment of the WaveSmith board of directors, not unduly onerous;

the terms of the agreement and plan of merger including the limited conditions to the parties' respective obligations under the agreement and plan of merger; and that the exchange ratios in the agreement and plan of merger did not limit the appreciation of the value of CIENA's common stock;

CIENA's right, pursuant to a letter agreement between WaveSmith and CIENA dated September 18, 2002, if at any time prior to July 2003 WaveSmith receives an acquisition offer from a third party, to receive notification of the offer prior to the execution of a definitive agreement and a fee of 5% of the total price paid by the third party if the transaction is consummated, thereby creating a disincentive for any third party to make an offer to acquire WaveSmith;

the expectation that the merger will qualify as a tax-free reorganization under federal tax law;

the opportunity created by the merger for WaveSmith stockholders to share in the combined company's long term growth;

information concerning WaveSmith's and CIENA's respective businesses, historical financial performance and condition, operations, technology, products, customers, competitive positions, prospects and management; and

due diligence discussions with CIENA by the WaveSmith board of directors and reports from WaveSmith management as to the results of its due diligence investigation of CIENA.

The WaveSmith board of directors also identified and considered a variety of potentially negative factors in its deliberations concerning the merger, including, but not limited to:

the risk that the potential benefits sought in the merger might not be fully realized;

the possibility that the merger might not be completed and the effect such a result would have on WaveSmith's operations;

that the exchange ratios in the agreement and plan of merger provided no protection against the depreciation of the value of CIENA's common stock;

the challenges relating to the integration of the two companies;

the possibility of management and employee disruption associated with the proposed merger and integrating the operations of the companies; and

the risks relating to CIENA's business and how they would affect the operations of the combined company.





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The WaveSmith board of directors believed that these risks were outweighed by the potential benefits of the merger. In view of the wide variety of factors, both positive and negative, considered by the WaveSmith board of directors, the WaveSmith board of directors did not find it practical to, and did not, quantify or otherwise assign relative weights to the specific factors considered and did not find that any factor was of special importance. Rather, the WaveSmith board of directors viewed its position and recommendations as being based on the totality of the information presented to and considered by it. In addition, different members of the WaveSmith board of directors may have assigned different weights to the various factors described above.

For the reasons discussed above, WaveSmith's board of directors has unanimously approved the merger agreement and the merger and has unanimously determined that the merger is fair to, and in the best interests of, WaveSmith and its stockholders and unanimously recommends that WaveSmith stockholders vote for adoption of the merger agreement and vote for approval of the merger.

In addition, WaveSmith's board of directors considered the interests that its officers and directors may have with respect to the merger in addition to their interests as WaveSmith stockholders. See "Interests of Executive Officers and Directors in the Merger" for a more complete discussion of these interests.

### **Interests of Executive Officers and Directors in the Merger**

In considering the recommendation of the WaveSmith board of directors regarding the merger, WaveSmith stockholders should be aware that some WaveSmith directors and executive officers have interests in the merger and related arrangements that are different from, or in addition to, their interests as WaveSmith stockholders. These interests may create potential conflicts of interest for these directors and officers because they may be more likely to approve the merger than WaveSmith stockholders generally. The WaveSmith board of directors was aware of these interests and took these interests into account in its deliberations of the merits of the merger and in approving the merger and the transactions contemplated by the merger agreement.

**Stock Ownership.** As of May 7, 2003, the directors and executive officers (and their affiliates) of WaveSmith beneficially owned 38,936,610 shares of common stock, no shares of series A preferred stock, 28,203,689 shares of series A-1 preferred stock, no shares of series B preferred stock, 66,666,661 shares of series B-1 preferred stock and 50,295,168 shares of series C preferred stock, all on as-converted to common stock basis, representing approximately 63.1% of the voting power of the fully-diluted outstanding WaveSmith capital stock. These shares would represent approximately 4.9% of the outstanding shares of CIENA after completion of the merger, based on shares outstanding on May 7, 2003.

**Acceleration of Vesting of WaveSmith Restricted Stock.** Assuming the merger is consummated, WaveSmith's right to repurchase an aggregate of 16,795,825 shares of WaveSmith common stock held by executive officers will terminate upon completion of the merger.

The table below sets forth the following: (i) the number of shares of common stock owned by the executive officers and directors, including executive officers during the last fiscal year, which are subject to rights of repurchase; (ii) the issue/repurchase price of such shares; (iii) the number of shares of common stock no longer subject to repurchase rights as of May 7, 2003 and (iv) the number of shares of common

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stock for which repurchase rights terminate in connection with the merger between WaveSmith and CIENA:

<b>Officer/Director</b>	<b>Number of Shares of Common Stock Beneficially Owned Subject to Repurchase Rights as of 5/7/03</b>	<b>Issue/Repurchase Price</b>	<b>Number of Shares of Common Stock no Longer Subject to Repurchase Rights as of 5/7/03</b>	<b>Number of Shares of Common Stock for which Repurchase Rights Terminate in Connection With Merger</b>
Thomas M. Burkardt	13,870,293	\$0.01	2,019,514	11,850,779
John Burnham	2,504,975	\$0.01	0	626,243
Robert Doucette	800,000	\$0.09	316,480	100,000
Robert Doucette	1,400,000	\$0.00	506,524	254,808
John O Hara (former executive officer)	2,727,699	\$0.00	2,200,761	526,938
Robert O Neil	5,825,523	\$0.01	0	1,456,380
Michael Regan	5,009,950	\$0.01	0	1,252,487
Gregg Savage	2,912,762	\$0.01	0	728,190

**WS Contract Merger.** As a result of the merger of WS Contract Corp. into WaveSmith immediately prior to the merger of WaveSmith into CIENA, the value of the WaveSmith common stock will be increased, resulting in the WaveSmith common stockholders, including some directors and executive officers, receiving a greater number of shares of CIENA common stock pursuant to the merger than such directors and executive officers would have received if the merger of WS Contract Corp. into WaveSmith had not occurred. The table below sets forth the number of shares of CIENA common stock which such executive officers would have received in the merger assuming that the merger of WS Contract Corp. into WaveSmith had not taken place, and the number of shares of CIENA common stock those executive officers will receive in the merger, assuming that there are 291,793,926 shares of WaveSmith capital stock outstanding on an as-converted basis on the effective date of the merger:

<b>Officer</b>	<b>Shares of CIENA common stock to be received assuming WS Contract Corp. is not merged into WaveSmith</b>	<b>Shares of CIENA common stock to be received assuming WS Contract Corp. is merged into WaveSmith</b>
Thomas M. Burkardt	848,863	1,197,658
John Burnham	152,332	214,925
Robert J. Dalias	378,457	533,963
Robert Doucette	132,726	187,263
John O Hara (former executive officer)	333,486	470,515
Robert O Neil	351,455	495,866
Michael Regan	302,251	426,445
Gregg Savage	182,967	258,147

**Indemnification.** The merger agreement provides that, upon the completion of the merger, for a period of six years CIENA will fulfill the obligations of WaveSmith to indemnify and hold harmless each person who is or was a director or officer of WaveSmith against any losses incurred based upon matters existing or occurring prior to the completion of the merger to the same extent that these persons were indemnified pursuant to WaveSmith's certificate of incorporation, bylaws or any indemnification agreement immediately prior to the merger. In addition, CIENA will cause the combined company to use commercially reasonable efforts to maintain in effect, if available, directors' and officers' liability insurance covering the individuals who are currently covered by WaveSmith's directors' and officers' insurance, on terms that are comparable to those currently applicable to WaveSmith directors and officers, provided that CIENA will not be required to pay annual premiums for such individuals in excess of 200% of the last annual premium paid by WaveSmith for directors' and officers' liability insurance prior to the date of the merger, but will at least maintain the level of coverage that can be purchased for that amount.

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**Stockholder Agreements.** The following WaveSmith directors and officers (and their respective affiliates) have entered into stockholder agreements pursuant to which they have agreed to vote shares of WaveSmith common and preferred stock over which they exercise voting control in favor of the adoption of the merger agreement and the merger:

Thomas M. Burkardt chief executive officer, president and chairman of the board of directors

Robert J. Dalias director

Michael Feinstein director

G. Felda Hardymon director

Robert C. Ketterson, Jr. director

The stockholder agreements also grant to CIENA an irrevocable option to purchase the shares of WaveSmith stock that are owned beneficially or of record by the stockholders who entered into the stockholder agreements. CIENA may exercise the options if the WaveSmith board withdraws its recommendation of the merger, WaveSmith breaches the terms of the merger agreement or terminates the merger agreement, or the stockholder fails to comply with the voting agreement. The option price is payable in cash at an exercise price based on the exchange formula set forth in the merger agreement, as if the merger became effective on April 9, 2003. See Terms of the Merger Agreement and Related Transactions Stockholder Agreements.

The total number of shares of WaveSmith capital stock (on an as-converted to common stock basis) covered by these agreements is 165,508,918 which represents approximately 57.7% of WaveSmith's outstanding common stock and preferred stock (on an as-converted to common stock basis) as of May 7, 2003.

**Change in Control Payments.** The acceleration of vesting, grant of restricted stock, payment of severance benefits and the increase in value of WaveSmith common stock resulting from the merger of WS Contract Corp. into WaveSmith, as well as other factors described below under Approval of Change in Control Payments for Federal Income Tax Purposes, could constitute potential parachute payments under the Internal Revenue Code of 1986. Individuals who receive the parachute payments would incur a 20% excise tax on the portion of the parachute payment that constituted an excess parachute payment and neither WaveSmith nor CIENA would be entitled to any income tax deduction it may otherwise be eligible for with respect to the excess parachute payments. In order to avoid these consequences, stockholders of WaveSmith are being asked to approve the payments, to the extent the payments would otherwise result in parachute payments, by separate vote at the meeting to which this proxy statement/prospectus relates. Holders of more than 75% of the voting power of all outstanding capital stock of WaveSmith, other than the affected persons, must approve these payments in order for the payments not to be treated as parachute payments. If the payments are not approved, the affected individuals have agreed to forego the portion of the payments that would cause them to receive a parachute payment.

## **Accounting Treatment**

The merger is expected to be accounted for using the purchase method of accounting. CIENA will be deemed the acquiror for financial reporting purposes. Under the purchase method of accounting, the purchase price in the merger is allocated among the WaveSmith assets acquired and the WaveSmith liabilities assumed to the extent of their fair market value, with any excess purchase price being allocated to goodwill.

## **Listing on The Nasdaq Stock Market**

CIENA has agreed to cause the shares of CIENA common stock issued in the merger to be approved for listing on the Nasdaq Stock Market.

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### **Governmental and Regulatory Approvals**

The Hart-Scott-Rodino Act and its related rules and regulations prohibit WaveSmith and CIENA from completing the merger until CIENA and WaveSmith make a filing with the Antitrust Division of the Department of Justice and the Federal Trade Commission, and the Hart-Scott-Rodino Antitrust Improvements Act waiting period requirements have been satisfied. Even after the waiting period expires or terminates, the Antitrust Division or the Federal Trade Commission may later challenge the merger on antitrust grounds. CIENA and WaveSmith made the filings with the Department of Justice and the Federal Trade Commission on April 10, 2003, and the waiting period was terminated on May 2, 2003. The merger also may be subject to review by the governmental authorities of various other jurisdictions under the antitrust laws of those jurisdictions.

### **Federal Income Tax Consequences**

#### *Generally*

The following discussion describes the material U.S. federal income tax consequences of the exchange of shares of WaveSmith's capital stock for CIENA common stock pursuant to the merger that are generally applicable to holders of WaveSmith capital stock. This discussion is based on currently existing provisions of the Internal Revenue Code of 1986, as amended (the "Code"), existing and proposed Treasury regulations thereunder and current administrative rulings and court decisions, all of which are subject to change. Any such change, which may or may not be retroactive, could alter the tax consequences to WaveSmith stockholders as described herein. Neither WaveSmith nor CIENA has requested nor will request a ruling from the Internal Revenue Service with regard to any of the tax consequences of the merger.

WaveSmith stockholders should be aware that this discussion does not deal with all U.S. federal income tax considerations that may be relevant to particular WaveSmith stockholders in light of their particular circumstances, such as stockholders who are dealers in securities, who are subject to the alternative minimum tax provisions of the Code, who are foreign persons, insurance companies, tax-exempt organizations, financial institutions, or broker-dealers, who hold their shares as part of a hedge, straddle, conversion or other risk-reduction transaction, who do not hold their WaveSmith stock as capital assets, who hold their WaveSmith stock through a partnership or other pass-through entity or who acquired their shares in connection with stock option or stock purchase plans or in other compensatory transactions. In particular, this discussion does not discuss the tax consequences of payments that may be subject to the "golden parachute" provisions of the Code, see *Approval of Certain Change in Control Payments for Federal Income Tax Purposes*. The section labeled *Federal Income Tax Consequences of the Merger of WS Contract Corp. into WaveSmith* discusses the tax consequences to holders of WaveSmith common stock of the changes to the liquidation preferences of the various classes of WaveSmith preferred stock as a result of the merger of WS Contract Corp. into WaveSmith immediately prior to the merger with CIENA. In addition, unless specifically addressed below, the following discussion does not address the tax consequences of the merger under foreign, state or local tax laws, the tax consequences of transactions effectuated prior or subsequent to, or concurrently with, the merger (whether or not any such transactions are undertaken in connection with the merger), including without limitation any transaction in which shares of WaveSmith capital stock are acquired or shares of CIENA common stock are disposed of, or the tax consequences of the assumption by CIENA of the WaveSmith employee options or the tax consequences of any receipt of rights to acquire CIENA common stock.

**Accordingly, WaveSmith stockholders are urged to consult their own tax advisors as to the specific tax consequences to them of the merger, including the applicable federal, state, local and foreign tax consequences.**

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In the opinion of Hogan & Hartson L.L.P., counsel to CIENA, and Testa, Hurwitz & Thibault, LLP, counsel to WaveSmith, the merger will be treated for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. The opinions:

Will not be binding on the IRS or the courts nor preclude the IRS from adopting a contrary position;

Will be based on the assumption that the merger will be consummated in accordance with the terms of the merger agreement; and

Will be subject to the limitations discussed below.

Additionally, the opinions will be based on certain assumptions and limitations, as well as factual representations made by, among others, CIENA and WaveSmith. Such representations, if incorrect, could jeopardize the conclusions reached in the opinions. Neither CIENA nor WaveSmith is currently aware of any facts or circumstances which would cause any such representations made to counsel to be untrue or incorrect in any material respect.

***Federal Income Tax Consequences if the Merger Qualifies as a Reorganization***

Assuming the merger qualifies as a reorganization within the meaning of Section 368(a) of the Code and the merger is completed under the current terms of the merger agreement, subject to the discussion below under the headings Federal Income Tax Consequences of the Merger of WS Contract Corp. into WaveSmith and Taxation of Escrowed Shares, the following U.S. federal income tax consequences generally will result:

No gain or loss will be recognized by holders of WaveSmith capital stock solely upon their receipt of CIENA common stock, including CIENA common stock subject to the escrow, in exchange for such WaveSmith capital stock in the merger (except with respect to cash received in lieu of fractional shares as discussed below).

The aggregate tax basis of the CIENA common stock received by each WaveSmith stockholder in the merger (including any fractional share interest in CIENA common stock and CIENA common stock subject to the escrow) will be the same as the aggregate tax basis of the WaveSmith capital stock surrendered by such WaveSmith stockholder in exchange therefor.

The holding period of the CIENA common stock received by each WaveSmith stockholder in the merger (including the CIENA common stock subject to the escrow) will include the period for which the WaveSmith capital stock surrendered in exchange therefor was considered to be held, provided that the WaveSmith capital stock so surrendered is held as a capital asset at the time of the merger.

Any cash payment received by a holder of WaveSmith capital stock in lieu of a fractional share of CIENA common stock will be treated as if such fractional share had been issued in the merger and then redeemed by CIENA. A WaveSmith stockholder receiving such cash will recognize gain or loss upon such payment, measured by the difference, if any, between the amount of cash received and the basis in such fractional share. The gain or loss will be capital gain or loss provided that the shares of WaveSmith capital stock were held as capital assets and will be long-term capital gain or loss if the WaveSmith capital stock exchanged for that fractional share of CIENA common stock had been held for more than one year at the time of the merger. However, if the receipt of cash instead of fractional shares is essentially equivalent to a dividend (determined by application of Section 302 of the Code on a stockholder by stockholder basis), some or all of this gain may be treated as a dividend and taxed as ordinary income.

If a WaveSmith stockholder dissents to the merger and receives solely cash in exchange for such stockholder's WaveSmith capital stock, such cash generally will be treated as a distribution in redemption of such stockholder's WaveSmith capital stock. Where such stockholder owns no CIENA common stock either directly or by reason of certain attribution rules set forth in the Code,

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the stockholder should recognize gain or loss measured by the difference between the amount of cash received and the adjusted tax basis of the WaveSmith capital stock surrendered. Different tax consequences will apply to any interest awarded by a court to a dissenting WaveSmith stockholder.

***Taxation of Escrowed Shares***

WaveSmith stockholders will be treated as owning an allocable portion of the CIENA common stock issued in the merger and deposited in escrow. An allocable portion of any dividends received on escrowed stock will be taxed to each former WaveSmith stockholder as ordinary income when such amounts are received by the escrow agent. CIENA does not anticipate declaring dividends. The escrow agreement provides that a portion of the shares of CIENA common stock placed in the escrow may be sold to reimburse the expenses of the stockholders representative. The sale of such shares of CIENA common stock will be treated as a taxable sale to the WaveSmith stockholders. Each WaveSmith stockholder will recognize capital gain or loss as a result of such sale, measured as the difference between such WaveSmith stockholder's basis in such sold shares of CIENA common stock and the fair market value of such shares of CIENA common stock, as of the date of such sale. Likewise, WaveSmith stockholders will be allocated their portion of any interest or other income earned from the investment of the proceeds of such sale. No gain or loss will be recognized by a WaveSmith stockholder upon the distribution of escrowed stock to the stockholder upon termination of the escrow arrangement or upon the release of escrowed stock to CIENA pursuant to the terms of the escrow agreement.

***Federal Income Tax Consequences of the Merger of WS Contract Corp. into WaveSmith***

As discussed below in *Terms of the Merger Agreement and Related Transactions* Merger of WS Contract Corp. into WaveSmith, the liquidation preferences of the various classes of WaveSmith preferred stock will change as a result of the merger of WS Contract Corp. into WaveSmith. As a result of these changes, the value of the WaveSmith common stock will be increased, resulting in the WaveSmith common stockholders receiving a greater number of shares of CIENA common stock (the *Additional Shares*) pursuant to the merger than they would have received if the merger of WS Contract Corp. into WaveSmith had not occurred. Although the matter is not free from doubt, CIENA and WaveSmith believe that this additional value should not be treated as being received by the common stockholders pursuant to a reorganization within the meaning of Section 368(a) of the Code. Consequently, the discussion above under the heading *Federal Income Tax Consequences if the Merger Qualifies as a Reorganization* does not apply to the value represented by the Additional Shares.

CIENA will take the position that the value of the Additional Shares (including a portion of the escrow shares) is taxable to the WaveSmith common stockholders as ordinary income. As a result of this position, to the extent that any Additional Shares are not subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code, in the hands of a WaveSmith common stockholder as of the effective time of the merger, such stockholder should recognize, as of the effective time, ordinary income in an amount equal to the fair market value of such Additional Shares. Such stockholder's basis in such Additional Shares should equal the fair market value of such shares as of the effective time of the merger, and the stockholder's holding period for such shares should begin the day after the merger.

If any Additional Shares are subject to a substantial risk of forfeiture, including a vesting requirement in the hands of a WaveSmith common stockholder, as of the effective time of the merger, such stockholder should not recognize ordinary income upon the effective time of the merger with respect to such Additional Shares. Instead, such stockholder should recognize ordinary income on the date when such Additional Shares vest (*i.e.*, cease to be subject to a substantial risk of forfeiture) in an amount equal to the fair market value of the vested shares at the time of vesting. The stockholder's basis in such vested shares should equal the fair market value of such shares as of the vesting date, and the stockholder's holding period for such shares should begin the day after the vesting date. A WaveSmith common stockholder may accelerate the date of his or her recognition of ordinary income and the beginning of the capital gains holding period with respect to any Additional Shares that are subject to a substantial risk of forfeiture by filing an election pursuant to Section 83(b) of the Code within 30 days of the merger of WS

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Contract Corp. into WaveSmith with respect to such Additional Shares. **Each WaveSmith common stockholder is urged to consult with his or her own tax advisors in order to determine (i) whether such stockholder should make a Section 83(b) election with respect to any Additional Shares that are subject to a substantial risk of forfeiture and (ii) whether such stockholder should make a protective Section 83(b) election with respect to other shares of CIENA common stock received pursuant to the merger in exchange for WaveSmith shares as to which the stockholder previously made a Section 83(b) election.**

Any ordinary income recognized as a result of the receipt of, or vesting in, the Additional Shares by a WaveSmith common stockholder who is a current or former employee of WaveSmith will be treated as compensation income and may be subject to income and employment tax withholding. Ordinary income recognized as a result of the receipt of, or vesting in, the Additional Shares by a WaveSmith common stockholder other than current or former employees will be reported on a Form 1099.

### ***Federal Income Tax Consequences if the Merger Does Not Qualify as a Reorganization***

Subject to the discussion above under the heading *Federal Income Tax Consequences of the Merger of WS Contract Corp. into WaveSmith*, a successful IRS challenge to the reorganization status of the merger would result in WaveSmith stockholders recognizing taxable gain or loss with respect to each share of WaveSmith capital stock surrendered equal to the difference between the stockholder's basis in such share and the fair market value, as of the effective time, of the CIENA common stock received in exchange therefor. In such event, a WaveSmith stockholder's aggregate basis in the CIENA common stock so received would equal its fair market value as of the effective time and the stockholder's holding period for such stock would begin the day after the merger. Such a challenge would not affect the taxable nature of the additional CIENA shares received by holders of WaveSmith common stock as a result of the merger of WS Contract Corp. into WaveSmith.

### ***Tax Reporting***

Each of CIENA and WaveSmith has agreed to report the merger as a reorganization within the meaning of Section 368(a) of the Code in all applicable tax returns filed by each party. Each WaveSmith stockholder will be required to file with such stockholder's U.S. federal income tax return a statement setting forth certain facts relating to the merger.

### ***U.S. Federal Backup Withholding***

A holder of WaveSmith capital stock may be subject, under some circumstances, to backup withholding at a rate of 30% with respect to certain payments made in the merger unless the holder provides proof of an applicable exemption or a correct taxpayer identification number, and otherwise complies with applicable requirements of the backup withholding rules. Any amounts withheld under the backup withholding rules are not an additional tax and may be refunded or credited against the holder's U.S. federal income tax liability, provided the required information is furnished to the Internal Revenue Service.

### ***Appraisal Rights of Dissenting Stockholders of WaveSmith***

If the merger is consummated, a holder of record of WaveSmith stock on the date of making a demand for appraisal, as described below, will be entitled to have those shares appraised by the Delaware Court of Chancery under Section 262 of the Delaware corporation statute and to receive payment for the fair value of those shares instead of the consideration provided for in the merger agreement. In order to be eligible to receive this payment, however, a WaveSmith stockholder must (1) continue to hold his or her shares through the time of the merger; (2) strictly comply with the procedures discussed under Section 262; and (3) not vote in favor of the merger. This proxy statement/prospectus is being sent to all holders of record of WaveSmith stock on the record date for the WaveSmith special meeting and constitutes notice of the appraisal rights available to those holders under Section 262.



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**The statutory right of appraisal granted by Section 262 requires strict compliance with the procedures in Section 262. Failure to follow any of these procedures may result in a termination or waiver of dissenters' rights under Section 262. The following is a summary of the principal provisions of Section 262.**

The following summary is not a complete statement of Section 262 of the Delaware corporation statute, and is qualified in its entirety by reference to Section 262 which is incorporated herein by reference, together with any amendments to the laws that may be adopted after the date of this proxy statement/prospectus. A copy of Section 262 is attached as Annex B to this proxy statement/prospectus.

A holder of WaveSmith stock who elects to exercise appraisal rights under Section 262 must deliver a written demand for appraisal of its shares of WaveSmith prior to the vote on the merger. The written demand must identify the stockholder of record and state the stockholder's intention to demand appraisal of his or her shares. All demands should be delivered to WaveSmith, Attention: Gregg Savage, Chief Financial Officer and Secretary.

Only a holder of shares of WaveSmith stock on the date of making a written demand for appraisal who continuously holds those shares through the time of the merger is entitled to seek appraisal. Demand for appraisal must be executed by or for the holder of record, fully and correctly, as that holder's name appears on the holder's stock certificates representing shares of WaveSmith stock. If WaveSmith stock is owned of record in a fiduciary capacity by a trustee, guardian or custodian, the demand should be made in that capacity. If WaveSmith stock is owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand should be made by or for all owners of record. An authorized agent, including one or more joint owners, may execute the demand for appraisal for a holder of record; that agent, however, must identify the record owner or owners and expressly disclose in the demand that the agent is acting as agent for the record owner or owners of the shares.

A record holder such as a broker who holds shares of WaveSmith stock as a nominee for beneficial owners, some of whom desire to demand appraisal, must exercise appraisal rights on behalf of those beneficial owners with respect to the shares of WaveSmith stock, held for those beneficial owners. In that case, the written demand for appraisal should state the number of shares of WaveSmith stock covered by it. Unless a demand for appraisal specifies a number of shares, the demand will be presumed to cover all shares of WaveSmith stock held in the name of the record owner.

**Beneficial owners who are not record owners and who intend to exercise appraisal rights should instruct the record owner to comply with the statutory requirements with respect to the exercise of appraisal rights before the date of the WaveSmith special meeting.**

Within 10 days after the merger, the surviving or resulting corporation is required to send notice of the effectiveness of the merger to each stockholder who prior to the time of the merger complies with the requirements of Section 262.

Within 120 days after the merger, the surviving corporation or any stockholder who has complied with the requirement of Section 262 may file a petition in the Delaware Court of Chancery demanding a determination of the fair value of the shares of WaveSmith stock held by all stockholders seeking appraisal. A dissenting stockholder must serve a copy of the petition on the surviving corporation. If no petition is filed by either the surviving corporation or any dissenting shareholder within the 120-day period, the rights of all dissenting stockholders to appraisal will cease. Stockholders seeking to exercise appraisal rights should not assume that the surviving corporation will file a petition with respect to the appraisal of the fair value of their shares or that the surviving corporation will initiate any negotiations with respect to the fair value of those shares. The surviving corporation is under no obligation to and has no present intention to take any action in this regard. Accordingly, stockholders who wish to seek appraisal of their shares should initiate all necessary action with respect to the perfection of their appraisal rights within the time periods and in the manner prescribed in Section 262. **Failure to file the petition on a timely basis will cause the stockholder's right to an appraisal to cease.**

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Within 120 days after the time of the merger, any stockholder who has complied with subsections (a) and (d) of Section 262 is entitled, upon written request, to receive from the surviving corporation a statement setting forth the total number of shares of WaveSmith stock not voted in favor of the merger with respect to which demands for appraisal have been received by WaveSmith and the number of holders of those shares. The statement must be mailed within 10 days after WaveSmith has received the written request or within 10 days after the time for delivery of demands for appraisal under subsection (d) of Section 262 has expired, whichever is later.

If a petition for an appraisal is filed in a timely manner, at the hearing on the petition, the Delaware Court of Chancery will determine which shareholders are entitled to appraisal rights and will appraise the shares of WaveSmith stock owned by those stockholders. The court will determine the fair value of those shares, exclusive of any element of value arising from the accomplishment or expectation of the merger, together with a fair rate of interest, to be paid, if any, upon the fair value.

Stockholders who consider seeking appraisal should consider that the fair value of their shares under Section 262 could be more than, the same as, or less than, the value of the consideration provided for in the merger agreement without the exercise of appraisal rights. The Court of Chancery may determine the cost of the appraisal proceeding and assess it against the parties as the Court deems equitable. Upon application of a dissenting stockholder, the Court may order that all or a portion of the expenses incurred by any dissenting stockholder in connection with the appraisal proceeding (including, without limitation, reasonable attorney's fees and the fees and expenses of experts) be charged pro rata against the value of all shares of WaveSmith stock entitled to appraisal. In the absence of a court determination or assessment, each party bears its own expenses.

Any stockholder who has demanded appraisal in compliance wit