

INFONET SERVICES CORP
Form DEFM14A
January 13, 2005
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934

Filed by the Registrant ☒ x

Filed by a Party other than the Registrant ☐ ..

Check the appropriate box:

☐ .. Preliminary Proxy Statement

☐ .. **Confidential, for Use of the Commission Only**

☒ x Definitive Proxy Statement

(as permitted by Rule 14a-6(e)(2))

☐ .. Definitive Additional Materials

☐ .. Soliciting Material Under Rule 14a-12

INFONET SERVICES CORPORATION

(Name of Registrant as Specified in its Charter)

Payment of Filing Fee (Check the appropriate box):

Edgar Filing: INFONET SERVICES CORP - Form DEFM14A

- .. No fee required.
- .. Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11
- (1) Title of each class of securities to which transaction applies:
- (2) Aggregate number of securities to which transaction applies:
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- (4) Proposed maximum aggregate value of transaction:
- (5) Total fee paid:
- ☒ Fee paid previously with preliminary materials.
- .. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.
- (1) Amount Previously Paid:
- (2) Form, Schedule or Registration Statement No.:
- (3) Filing party:
- (4) Date Filed:

Table of Contents

Merger Proposal

Dear Stockholder:

Together with the other members of the Infonet board of directors, I cordially invite you to attend our special meeting of stockholders to be held on February 23, 2005 at 10:00 a.m., local time, at the Ritz-Carlton, Marina del Rey, located at 4375 Admiralty Way, Marina del Rey, California 90292.

On November 8, 2004, we entered into an Agreement and Plan of Merger with British Telecommunications plc (BT), a wholly-owned subsidiary of BT Group plc, and Blue Acquisition Corp., a wholly-owned subsidiary of BT, providing for our merger with Blue Acquisition Corp. If the merger is completed, you will be entitled to receive \$2.06 in cash for each share of our common stock that you hold. At our special meeting of stockholders, we will ask you to, among other things, consider and vote on the approval and adoption of the merger agreement.

A special committee of our board of directors, comprised entirely of directors independent of Infonet and independent of the six holders of our Class A common stock, carefully reviewed and considered the terms and conditions of the merger agreement and proposed merger. Based on this review, on November 7, 2004, the independent special committee unanimously determined that the merger agreement and the merger are fair to and in the best interests of Infonet and its stockholders and declared the merger agreement to be advisable. The independent special committee recommended that our board of directors approve the merger agreement and that our stockholders adopt and approve the merger agreement.

Our board of directors also carefully reviewed and considered the terms and conditions of the merger agreement and proposed merger. Based on this review, on November 7, 2004, our board of directors, by unanimous vote of all directors voting, determined that the merger agreement and the merger are fair to and in the best interests of Infonet and its stockholders, approved the merger agreement and declared its advisability.

Accordingly, our board of directors has approved the merger agreement and **our board of directors and the independent special committee recommend that you vote FOR the approval and adoption of the merger agreement.**

We cannot complete the merger without the approval of the holders of two-thirds of the voting power of the outstanding shares of our Class A and Class B common stock, voting together as a single class, and the approval of the holders of 95% of our outstanding Class A common stock. Stockholders holding shares of our common stock representing approximately 96.55% of the voting power of our outstanding common stock and all of our outstanding Class A common stock have entered into stockholder agreements with BT, under which each stockholder has agreed, among other things, to vote its shares covered by the stockholder agreements for the approval and adoption of the merger agreement. The affirmative vote of these stockholders is sufficient for the approval and adoption of the merger agreement. The completion of the merger is also subject to the satisfaction or waiver of several conditions, including receiving clearance from applicable regulatory agencies. We encourage you to read the accompanying proxy statement, including the annexes, in its entirety because it explains the proposed merger, the documents related to the merger and other related matters.

Edgar Filing: INFONET SERVICES CORP - Form DEFM14A

Whether or not you plan to attend the special meeting, please take the time to submit a proxy by following the instructions on your proxy card as soon as possible. If your shares are held in an account at a brokerage firm, bank or other nominee, you should instruct your broker, bank or nominee how to vote in accordance with the voting instruction form furnished by your broker, bank or nominee. **If you do not vote or do not instruct your broker, bank or nominee how to vote, it will have the same effect as voting against the approval and adoption of the merger agreement.**

If you sign, date and send your proxy and do not indicate how you want to vote, your proxy will be voted FOR the approval and adoption of the merger agreement.

I enthusiastically support this transaction and join the other members of our board of directors in recommending that you vote for the approval and adoption of the merger agreement.

Sincerely,

José A. Collazo

Chief Executive Officer, President and Chairman

Table of Contents

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To Be Held on February 23, 2005

To the Stockholders of Infonet Services Corporation:

We will hold our special meeting of the stockholders of Infonet Services Corporation on February 23, 2005, at 10:00 a.m., local time, at the Ritz-Carlton, Marina del Rey, located at 4375 Admiralty Way, Marina del Rey, California 90292, to consider and vote on the following proposals:

1. To approve and adopt the Agreement and Plan of Merger, dated as of November 8, 2004, by and among Infonet Services Corporation, a Delaware corporation, British Telecommunications plc, a company incorporated in England and Wales, and Blue Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of British Telecommunications plc; and
2. To transact any other business as may properly come before the special meeting.

Only stockholders of record at the close of business on January 7, 2005, the record date for the special meeting, may vote at the special meeting. Each share of our Class B common stock is entitled to one vote on each matter to be voted upon at the special meeting, and each share of our Class A common stock is entitled to ten votes on each matter to be voted upon at the special meeting. A complete list of our stockholders of record entitled to vote at the special meeting will be available for the ten days before the special meeting at our executive offices and principal place of business for inspection by stockholders during ordinary business hours for any purpose germane to the special meeting and will also be available at the special meeting. **Your vote is very important.** Please submit your proxy as soon as possible to make sure that your shares are represented and voted at the special meeting, whether or not you plan to attend the special meeting.

Whether you attend the special meeting or not, you may revoke a proxy at any time before it is voted by submitting to our secretary a duly executed revocation of proxy or a duly executed proxy bearing a later date or by appearing at the special meeting and voting in person. You may revoke a proxy by any of these methods, regardless of the method used to deliver your previous proxy. Attendance at the special meeting without voting will not itself revoke a proxy. If your shares are held in an account at a brokerage firm, bank or other nominee, you must contact your broker, bank or nominee and follow their instructions to revoke your proxy.

For more information about the merger described above and the other transactions contemplated by the merger agreement, please review the accompanying proxy statement and the merger agreement attached to it as Annex A.

By Order of the Board of Directors,

Edgar Filing: INFONET SERVICES CORP - Form DEFM14A

Paul A. Galleberg

Senior Vice President, General Counsel and Secretary

El Segundo, California

January 13, 2005

This proxy statement is dated January 13, 2005 and is first being mailed to stockholders on or about January 19, 2005.

Table of Contents

SOURCES OF ADDITIONAL INFORMATION

Except where we indicate otherwise, we use the name "BT" in this proxy statement to refer to British Telecommunications plc, and references to "us", "we", "our", "ours" and similar expressions used in this proxy statement refer to Infonet Services Corporation. We briefly describe BT and the other parties to the merger agreement under "The Merger" "The Companies" on page 21. All information contained in this proxy statement with respect to the parties to the merger agreement other than Infonet has been supplied by and is the responsibility of those other parties.

Infonet Services Corporation and BT are each subject to the informational requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Each company files reports and other information with the Securities and Exchange Commission, or the SEC.

You may read and copy these reports, proxy statements and other information (including the documents described in "Incorporation of Information by Reference" on page 76) at the SEC's Public Reference Section at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website, located at <http://www.sec.gov>, that contains reports, proxy statements and other information regarding registrants that file electronically with the SEC.

You may also read reports, proxy statements and other information relating to Infonet and BT at the offices of the New York Stock Exchange at 20 Broad Street, New York, New York 10005.

If you have questions about the special meeting or the merger with BT after reading this proxy, or if you would like additional copies of this proxy statement or the proxy card, please contact:

Infonet Services Corporation

Investor Relations

2160 East Grand Avenue, El Segundo, California 90245

Tel. (310) 335-2600

Email: irideas@infonet.com

Table of Contents

TABLE OF CONTENTS

	Page
<u>SUMMARY TERM SHEET</u>	1
<u>The Companies</u>	1
<u>The Merger</u>	1
<u>Recommendation of Our Independent Special Committee and Board of Directors</u>	2
<u>The Special Meeting</u>	2
<u>Stockholders Entitled to Vote; Vote Required</u>	2
<u>The Stockholder Agreements</u>	3
<u>Opinions of Financial Advisors</u>	3
<u>Interests of Our Directors and Executive Officers in the Merger</u>	4
<u>Delisting and Deregistration of Our Class B Common Stock</u>	4
<u>Litigation Relating to the Merger</u>	5
<u>The Merger Agreement</u>	5
<u>Material U.S. Federal Income Tax Consequences</u>	8
<u>Regulatory Matters</u>	9
<u>Paying Agent</u>	9
<u>Appraisal Rights</u>	10
<u>QUESTIONS AND ANSWERS ABOUT THE MERGER</u>	11
<u>CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS</u>	16
<u>THE INFONET SPECIAL MEETING</u>	18
<u>Date, Time and Place</u>	18
<u>Purpose of the Special Meeting</u>	18
<u>Recommendation of Our Independent Special Committee and Board of Directors</u>	18
<u>Record Date; Stockholders Entitled to Vote</u>	18
<u>Quorum and Vote Required</u>	18
<u>Voting by Our Directors and Executive Officers</u>	19
<u>Voting by Our Stockholders</u>	19
<u>Voting; Proxies</u>	19
<u>Other Business</u>	20
<u>Revocation of Proxies</u>	20
<u>Solicitation of Proxies</u>	20
<u>Appraisal Rights</u>	20
<u>Assistance</u>	20
<u>APPROVAL OF THE MERGER AGREEMENT</u>	21
<u>THE MERGER</u>	21
<u>Introduction</u>	21
<u>The Companies</u>	21
<u>Background of the Merger</u>	22
<u>Recommendation of Our Independent Special Committee and Board of Directors; Our Reasons for the Merger</u>	35
<u>Opinion of Our Independent Special Committee's Financial Advisor</u>	38
<u>Opinion of Our Financial Advisor</u>	42
<u>Description of the Stockholder Agreements</u>	46
<u>Interests of Our Directors and Executive Officers in the Merger</u>	48
<u>Dividends</u>	51
<u>Regulatory Matters</u>	51

Table of Contents

	<u>Page</u>
<u>Appraisal Rights</u>	52
<u>Material U.S. Federal Income Tax Consequences</u>	56
<u>Delisting and Deregistration of Our Class B Common Stock</u>	58
<u>Litigation Relating to the Merger</u>	58
<u>THE MERGER AGREEMENT</u>	59
<u>Structure and Effective Time</u>	59
<u>Merger Consideration</u>	59
<u>Treatment of Stock Options and Stock-Based Awards</u>	59
<u>Surrender of Stock Certificates; Payment of Shares; Lost Certificates</u>	60
<u>Directors and Officers</u>	60
<u>Representations and Warranties</u>	60
<u>Covenants</u>	62
<u>Board Recommendation; Stockholder Meeting</u>	66
<u>Employee Benefits</u>	66
<u>Efforts to Complete the Merger; Regulatory Matters</u>	66
<u>Indemnification and Insurance</u>	67
<u>Conditions to the Merger</u>	67
<u>Termination</u>	69
<u>Termination Fees and Other Expenses</u>	70
<u>Additional Agreements</u>	70
<u>Amendment</u>	71
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	72
<u>STOCKHOLDER PROPOSALS FOR 2005 ANNUAL MEETING</u>	75
<u>OTHER MATTERS</u>	75
<u>INCORPORATION OF INFORMATION BY REFERENCE</u>	76

Annexes

Annex A	Agreement and Plan of Merger dated as of November 8, 2004 by and among British Telecommunications plc, Blue Acquisition Corp. and Infonet Services Corporation	A-1
Annex B	Opinion of Banc of America Securities LLC	B-1
Annex C	Opinion of UBS Securities LLC	C-1
Annex D-1	Form of Stockholder Agreement (Executive Officer)	D-1-1
Annex D-2	Form of Amendment to Stockholder Agreement (Executive Officer)	D-2-1
Annex E-1	Form of Stockholder Agreement (Class A Stockholder)	E-1-1
Annex E-2	Form of Amendment to Stockholder Agreement (Class A Stockholder)	E-2-1
Annex F	Section 262 of the General Corporation Law of the State of Delaware	F-1

Table of Contents

SUMMARY TERM SHEET

This summary term sheet, together with the section of this proxy statement entitled "Questions and Answers About the Merger", highlights selected information from this proxy statement and may not contain all the information about the merger that is important to you. To understand the merger fully and for a more complete description of the legal terms of the merger, you should read carefully this proxy statement in its entirety, including the annexes, and the other documents to which we have referred you.

The Companies

Infonet Services Corporation

We provide cross-border managed voice and data communications services to multinational entities worldwide. We are a Delaware corporation and we were incorporated in March 1988. Our principal executive offices are located at 2160 East Grand Avenue, El Segundo, California 90245, and our telephone number there is (310) 335-2600.

British Telecommunications plc (BT)

BT, a company incorporated in England and Wales, is a wholly-owned subsidiary of BT Group plc and holds substantially all businesses and assets of the BT Group. The BT Group is an integrated group of businesses providing global voice and data services, particularly in the United Kingdom and Europe, but also in the Americas and the Asia Pacific region. BT was incorporated in April 1984. Its principal executive offices are located at the BT Centre, 81 Newgate Street, London EC1A 7AJ, England, and its telephone number there is +44 20 7356 5000.

Blue Acquisition Corp.

Blue Acquisition Corp. is a Delaware corporation and a wholly-owned subsidiary of BT Telecommunications plc. Blue Acquisition Corp. was organized solely for the purpose of entering into the merger agreement with Infonet and completing the merger and has not conducted any business operations other than those incident to its formation. Blue Acquisition Corp.'s principal executive offices are located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and its telephone number there is (800) 677-3394. If the merger is completed, Blue Acquisition Corp. will cease to exist following its merger with and into Infonet.

The Merger

We have agreed to be acquired by BT pursuant to the terms of the merger agreement that is described in this proxy statement and attached as Annex A. We encourage you to read the merger agreement carefully and in its entirety. It is the principal document governing the merger.

Edgar Filing: INFONET SERVICES CORP - Form DEFM14A

Under the terms of the merger agreement, Blue Acquisition Corp. will merge with and into Infonet, with Infonet surviving as a wholly-owned subsidiary of BT. Pursuant to the merger, each share of our Class A and Class B common stock, par value \$0.01 per share, other than shares owned by Infonet, BT or Blue Acquisition Corp. and shares for which appraisal rights have been validly exercised under Delaware law, will be converted into the right to receive \$2.06 in cash, without interest.

All outstanding options to purchase shares of our Class B common stock, whether vested or unvested, will be canceled and converted into the right to receive a cash payment, without interest, equal to the excess, if any, of \$2.06 over the per share exercise price of the option, multiplied by the number of shares of our Class B common stock subject to the option, less any applicable withholding taxes.

Table of Contents

After the merger is effected, each share of our Class A and Class B common stock outstanding immediately prior to the merger will be automatically canceled and will cease to exist, and each holder of a certificate or certificates which immediately prior to the merger represented shares of our Class A and Class B common stock will cease to have any rights with respect to such shares of our common stock. Each certificate representing shares of our Class A and Class B common stock will thereafter represent only the right to receive \$2.06 in cash, without interest. After the merger is effected, each dissenting stockholder will no longer have any rights as a stockholder of Infonet with respect to his or her shares, except for the right to receive payment of the judicially-determined fair value of his or her shares under Delaware law if the stockholder has validly perfected and not withdrawn this right. Dissenting stockholders will only receive the judicially-determined fair value of their shares if one or more dissenting stockholders files suit in the Delaware Court of Chancery and litigates the resulting appraisal case to a decision. For additional information about appraisal rights, see *The Merger Appraisal Rights* on page 52.

Recommendation of Our Independent Special Committee and Board of Directors

An independent special committee of our board of directors has unanimously determined that the merger is fair to and in the best interests of the holders of our Class B common stock and recommended that our board of directors approve the merger agreement and that our board recommend that our stockholders adopt the merger agreement and approve the merger.

After receiving and considering the recommendation of the independent special committee, on November 7, 2004, our board of directors, by unanimous vote of all directors voting:

approved the merger agreement and other transactions contemplated by the merger agreement, and declared the merger to be advisable to our stockholders;

determined that it was in the best interests of our stockholders to enter into the merger agreement and consummate the merger on the terms and conditions set forth in the merger agreement; and

declared that the consideration to be paid to the holders of our Class B common stock in the merger was fair.

Our board of directors recommends that our stockholders vote **FOR** the approval and adoption of the merger agreement. To review the background and reasons for the merger in greater detail, see pages 22 through 38.

The Special Meeting

The special meeting of our stockholders will be held on February 23, 2005 at 10:00 a.m., local time, at the Ritz-Carlton, Marina del Rey, located at 4375 Admiralty Way, Marina del Rey, California, 90292. At the special meeting, you will be asked to vote to approve and adopt the merger agreement.

Stockholders Entitled to Vote; Vote Required

Edgar Filing: INFONET SERVICES CORP - Form DEFM14A

You may vote at the special meeting if you owned our Class A or Class B common stock at the close of business on January 7, 2005, the record date for the special meeting. On that date, there were 161,403,358 shares of our Class A common stock and 307,286,324 shares of our Class B common stock outstanding and entitled to vote. You may cast one vote for each share of our Class B common stock that you owned on the record date and ten votes for each share of our Class A common stock that you owned on the record date. Approval and adoption of the merger agreement requires the affirmative vote of the holders of two-thirds of the voting power of the outstanding shares of our Class A and Class B common stock, voting together as a single class, and the approval by the holders of 95% of our outstanding Class A common stock.

Table of Contents

The Stockholder Agreements

As a condition to and contemporaneously with its entering into the merger agreement, BT required each of José Collazo, our Chief Executive Officer, President and Chairman, Akbar Firdosy, our Vice President and Chief Financial Officer, Paul Galleberg, our Senior Vice President, General Counsel and Secretary, and the six holders of our Class A common stock, consisting of KDDI Corporation, KPN Telecom B.V., Swisscom AG, Telefonica International Holding B.V., TeliaSonera AB and Telstra Corporation Limited, to enter into a stockholder agreement under which each stockholder has agreed to vote its shares of our common stock in favor of the approval and adoption of the merger agreement. On December 14, 2004, BT and each of Messrs. Collazo, Firdosy and Galleberg and the six holders of our Class A common stock entered into amendments to the stockholder agreements to clarify certain administrative items in the agreements and, in the case of Messrs. Collazo, Firdosy and Galleberg, reduce the number of shares of our Class B common stock that are subject to the stockholder agreements. The stockholder agreements terminate upon the earliest of the effective time of the merger, the termination of the merger agreement or an amendment or other modification to the merger agreement that provides for a reduction in the merger consideration or for a payment other than in cash. A form of the stockholder agreement signed by each of Messrs. Collazo, Firdosy and Galleberg and a form of the corresponding amendment are attached to this proxy statement as Annex D-1 and Annex D-2, respectively, and a form of the stockholder agreement signed by each of the holders of our Class A common stock and a form of the corresponding amendment are attached to this proxy statement as Annex E-1 and Annex E-2, respectively. We encourage you to read the stockholder agreements and the amendments carefully in their entirety.

In the event that the merger agreement is terminated under circumstances where BT is or may become entitled to receive the \$35 million termination fee described in The Merger Agreement Termination Fees and Other Expenses, each stockholder signing a stockholder agreement has agreed to pay BT 50% of the profit it or he receives with respect to the shares subject to the stockholder agreements from the consummation of any other alternative transaction we enter into within one year of the termination of the merger agreement until the aggregate profit retained by all stockholders entering stockholder agreements with respect to the shares subject to the stockholder agreements is equal to \$35 million, and 100% of the profit received by such stockholder thereafter. In the event the merger with BT is completed following the announcement of a competing takeover proposal and BT has increased the amount payable to each holder of our common stock in the merger, each stockholder that is party to a stockholder agreement has also agreed to pay BT 100% of the difference between the fair market value of the consideration received by such stockholder in the merger with respect to the shares subject to its stockholder agreement and \$2.06 per share.

As of the record date, the parties to these stockholder agreements held an aggregate of 161,403,358 shares of our Class A common stock and 240,931,082 shares of our Class B common stock that are subject to the stockholder agreements, representing all of our outstanding Class A common stock and approximately 96.55% of the voting power of our outstanding common stock. Under the terms of our certificate of incorporation and bylaws, the affirmative vote of the parties to the stockholder agreements is sufficient for the approval and adoption of the merger agreement.

Opinions of Financial Advisors

Opinion of Our Independent Special Committee's Financial Advisor

In connection with the merger, the independent special committee of our board of directors received a written opinion from Banc of America Securities LLC, the independent special committee's financial advisor, as to the fairness of the merger consideration, from a financial point of view, to the holders of shares of our Class B common stock. The full text of the written opinion of Banc of America Securities, dated November 7, 2004, is attached to this proxy statement as Annex B. Holders of our Class B common stock are encouraged to read this opinion carefully in its entirety for a description of the assumptions made, procedures followed, matters

Table of Contents

considered and limitations on the review undertaken. Banc of America Securities' opinion is directed to the independent special committee, does not address any other aspect of the merger and does not constitute a recommendation to any stockholder as to how to vote or act with respect to the merger agreement. See "The Merger" "Opinion of Our Independent Special Committee's Financial Advisor" on page 38.

Opinion of Our Financial Advisor

In connection with the merger, our board of directors received a written opinion from UBS Securities LLC, our financial advisor, as to the fairness, from a financial point of view, of the merger consideration to be received by holders of our Class B common stock (other than our affiliates). The full text of UBS's written opinion, dated November 7, 2004, is attached to this proxy statement as Annex C. Holders of our Class B common stock are encouraged to read this opinion carefully in its entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken. UBS's opinion was provided to our board in its evaluation of the merger consideration, does not address any other aspect of the merger and does not constitute a recommendation to any stockholder as to how to vote or act with respect to any matters relating to the proposed merger. See "The Merger" "Opinion of Our Financial Advisor" on page 42.

Interests of Our Directors and Executive Officers in the Merger

When considering our board of directors' recommendation that you vote in favor of the approval and adoption of the merger agreement, you should be aware that members of our board of directors and our executive officers may have interests in the merger that differ from, or are in addition to, those of other stockholders. For example:

all outstanding options to purchase shares of our Class B common stock (including options held by our directors and executive officers), whether vested or unvested, will be canceled and converted into the right to receive a cash payment, without interest, equal to the excess, if any, of \$2.06 over the per share exercise price of the option, multiplied by the number of shares of our Class B common stock subject to the option, less any applicable withholding taxes;

each outstanding share of our restricted Class B common stock (including shares of restricted stock held by certain of our executive officers) will fully vest and be converted at the effective time of the merger into the right to receive a cash payment equal to the number of shares of our Class B common stock subject to the award multiplied by \$2.06;

in connection with the signing of the merger agreement, Messrs. Collazo, Firdosy and Galleberg entered into binding preliminary employment agreements with BT, effective upon completion of the merger, that provide for their continued employment during a specified period. Under these preliminary employment agreements, which will replace the executives' existing employment agreements with Infonet and our CEO Incentive Bonus Plan, each executive will receive an incentive payment and significant benefits as well as be eligible for a gross-up payment for any "golden parachute" excise taxes incurred;

our other officers are expected to be retained as employees of BT following the merger; and

our directors and officers will continue to be indemnified for acts or omissions occurring at or prior to the effective time of the merger and will have the benefit of liability insurance for six years after completion of the merger.

Delisting and Deregistration of Our Class B Common Stock

If the merger is completed, our Class B common stock will no longer be listed on the New York Stock Exchange and will be deregistered under the Exchange Act, and we will no longer file periodic reports with the SEC.

Table of Contents

Litigation Relating to the Merger

Between November 8, 2004 and November 18, 2004, three purported class action lawsuits were filed in the California Superior Court, County of Los Angeles, titled *Depras v. Infonet Services Corporation et al.*, Case No. BC324238, *Kurt v. Infonet Services Corporation et al.*, Case No. BC324239, and *Peel v. Infonet Services Corporation et al.*, Case No. BC324809, against us, our board of directors' members John Allerton, Per-Eric Fylking, Yuzo Mori, Hanspeter Quadri, Timothy P. Hartman, Peter G. Hanelt, Bruce A. Beda, José Manuel Santero, Matthew J. O'Rourke and Eric M. de Jong, and our Chief Executive Officer, President and Chairman, José A. Collazo. Each complaint is filed on behalf of a purported class of holders of our Class B common stock and alleges that the defendants breached their fiduciary duties to our stockholders by approving the merger agreement with BT. The complaints seek relief including an injunction preventing the completion of the merger, rescission of the proposed transaction to the extent already implemented and reasonable costs, and attorneys' fees.

The time for the defendants to respond to the complaints has not yet expired.

The Merger Agreement

Conditions to the Completion of the Merger (page 67)

Our and BT's obligations to effect the merger are subject to the satisfaction of the following conditions:

the approval and adoption of the merger agreement by the holders of two-thirds of the voting power of the outstanding shares of our Class A and Class B common stock, voting together as a single class;

the approval and adoption of the merger agreement by the holders of 95% of the outstanding shares of our Class A common stock; and

there shall not be any law or order of a governmental entity existing that prevents or prohibits the consummation of the merger.

BT's and Blue Acquisition Corp.'s obligations to complete the merger are subject to the satisfaction by us or waiver by them of the following conditions:

the accuracy of our representations and warranties, except where such inaccuracy would not reasonably be expected to result in a material adverse effect;

the material compliance with our obligations under the merger agreement;

the expiration or termination of the applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, or the HSR Act, without the imposition of a materially burdensome condition or restriction;

Edgar Filing: INFONET SERVICES CORP - Form DEFM14A

to the extent Council Regulation No. 139/2004 of the European Community, as amended (which we refer to as Council Regulation No. 139/2004) applies to the merger, the indication of the European Commission, without the imposition of any materially burdensome condition, that the concentration is compatible with the common market pursuant to its terms and, if the European Commission has referred the concentration to the European Economic Area Member State(s), the approval of the merger by the European Economic Area Member State(s) without the imposition of any materially burdensome condition or restriction;

if BT is of the opinion that there is any reasonable doubt as to whether Council Regulation No. 139/2004 applies to the merger, the indication of the European Commission that Council Regulation No. 139/2004 does not apply;

Table of Contents

the granting by the relevant authority of any other required antitrust or merger control clearances, consents or approvals required for the merger without the imposition of a materially burdensome condition or restriction;

the receipt of any required approvals from the U.S. Federal Communications Commission, or the FCC, without the imposition of any materially burdensome restriction;

the receipt of all legally required governmental consents, and any other governmental consents the failure of which to be obtained could reasonably be expected to result in the requirement of a material divestiture;

the receipt of all other third party consents required in connection with the merger except for those the failure of which to be obtained would not reasonably be expected to be materially burdensome;

the absence of any law or order that restrains, enjoins, prevents or otherwise prohibits or makes illegal the completion of the merger;

no governmental entity (1) having imposed any statute, rule, regulation, executive order, decree, judgment, injunction or other order (whether temporary, preliminary or permanent) or instituted or threatened any action or (2) based upon any applicable non-competition, antitrust or pre-merger notification laws, having instituted or threatened to institute any action, which seeks to:

- prohibit or limit the ownership or operations by us, BT or any of our respective affiliates or subsidiaries, or compel the disposition, of any material part of our, BT's or any of our respective affiliates or subsidiaries' businesses or assets;
- impose limitations on the ability of BT or any of its affiliates to hold any shares of our stock following the merger; or
- prohibit BT or any of its affiliates from controlling in any material respect our or our subsidiaries' businesses or operations;

the absence of certain governmental actions or threats based upon applicable non-competition, antitrust or pre-merger notification laws, which, in addition to the above seek to restrain or prohibit the merger or that are reasonably likely to be materially burdensome;

the absence of any material adverse effect on our business; and

the absence of any notice that a governmental entity has imposed or threatened to impose material fines or penalties on us or any of our subsidiaries for failure to comply with regulatory laws.

Our obligations to complete the merger are subject to the satisfaction by BT and/or Blue Acquisition Corp. or waiver by us of the following conditions:

the accuracy of BT's and Blue Acquisition Corp.'s representations and warranties, except where such inaccuracy would not reasonably be expected to prevent or materially delay the consummation of the merger, and BT's and Blue Acquisition Corp.'s material compliance with their obligations; and

receipt by us, BT or our applicable subsidiaries of all legally required approvals or orders from governmental entities and all third party consents that are reasonably required in connection with the merger, to the extent the failure to obtain any such consents,

Edgar Filing: INFONET SERVICES CORP - Form DEFM14A

approvals or orders would reasonably be expected to subject our directors and officers to criminal or material civil liability or give rise to any judgment, injunction or other order which could prevent or prohibit consummation of the merger.

Where legally permissible, a party may waive a condition to its obligation to complete the merger even though that condition has not been satisfied.

Table of Contents

No Solicitation Covenant (page 64)

The merger agreement contains restrictions on our ability to solicit, initiate, participate in discussions or negotiations with, provide any non-public information to, or enter into an agreement with, a third party with respect to a proposal to acquire all of, or any significant interest in, Infonet. The merger agreement does not, however, prohibit us or our board of directors from considering and potentially approving and recommending an unsolicited superior proposal from a third party, if we and our board of directors comply with the appropriate provisions of the merger agreement.

Termination of the Merger Agreement (page 69)

The merger agreement may be terminated at any time before the completion of the merger, whether before or after the approval and adoption of the merger agreement by our stockholders:

by our and BT's mutual written consent;

by either BT or us, if the merger is not completed by November 8, 2005;

by either BT or us, if any statute, rule, regulation, executive order, decree, judgment, ruling, injunction, other order or other action taken by a governmental entity which prevents or prohibits the completion of the merger becomes final and nonappealable;

by either BT or us, if our stockholders fail to approve and adopt the merger agreement;

by either BT or us, if the other party breaches its representations and agreements so that the related closing conditions cannot be satisfied by November 8, 2005 and such breach cannot be cured within 20 business days after receipt of written notice from the non-breaching party;

by BT if:

- our board of directors withdraws, proposes publicly to withdraw (or modifies or proposes publicly to modify in any manner adverse to BT), or fails to recommend that our stockholders vote or approve the merger agreement, or we otherwise fail to meet our obligation to duly call and give notice of a special meeting of our stockholders in accordance with the terms of the merger agreement to approve the merger agreement, if this breach cannot be cured or is not cured within eight days after receiving notice of such breach;
- in connection with any required filing or submission, we or BT are required to accept a materially burdensome condition and we and BT are unable to cause such condition to be removed; or
- any legal restraint is in effect, and has become final and nonappealable, under any antitrust law that would:

Edgar Filing: INFONET SERVICES CORP - Form DEFM14A

prohibit or limit the ownership or operations by us, BT or any of our respective affiliates or subsidiaries, or compel us, BT or any of our respective affiliates or subsidiaries, to dispose of, or hold separate, of any material part of our, BT's or any of our respective affiliates or subsidiaries' businesses or assets;

impose limitations on the ability of BT or any of its affiliates to hold any shares of our stock after the merger; or

prohibit BT or any of its affiliates from effectively controlling in any material respect our or our subsidiaries' businesses or operations;

by us, prior to our stockholders' approval of the merger agreement, if we receive a superior proposal from a third party, and the independent special committee of our board of directors has determined in good faith that failure to accept the superior proposal would reasonably be expected to be inconsistent with the fulfillment of its fiduciary duties, subject to certain conditions and payment of the termination fees described below.

Table of Contents

Termination Fees and Other Expenses (page 70)

We will be required to pay a termination fee of \$35 million to BT if:

following the receipt of a takeover proposal:

- BT terminates the merger agreement because we (i) breach our covenants contained in the merger agreement, or (ii) breach our representations and warranties contained in the merger agreement and within 12 months after the termination we enter into an acquisition agreement to consummate any takeover proposal; or
- either BT or we terminate the merger agreement because we fail to obtain stockholder approval of the merger agreement;

we terminate the merger agreement because we received a superior proposal; or

BT terminates the merger agreement because our board of directors withdraws or fails to recommend that our stockholders vote to approve the merger agreement, or we fail to duly call and give notice of a meeting of our stockholders for the purpose of obtaining stockholder approval of the merger agreement and this breach cannot be cured or is not cured within eight days after receiving notice of the breach.

Each party will pay its own fees and expenses in connection with the merger, whether or not the merger is consummated.

Effect on Outstanding Stock Options, Restricted Stock and Employee Stock Purchase Plan (page 59)

At the effective time of the merger, each outstanding option to purchase shares of our Class B common stock, whether vested or unvested, will be canceled and converted into the right to receive a cash payment, without interest, equal to the excess, if any, of \$2.06 over the per share exercise price of the option, multiplied by the number of shares of our Class B common stock subject to the option, less any applicable withholding taxes.

At the effective time of the merger, each outstanding share of our restricted Class B common stock will fully vest and be converted into the right to receive a cash payment, without interest, equal to the number of shares of our Class B common stock subject to the award multiplied by \$2.06.

We will terminate our employee stock purchase plan before the merger is completed, and any offering period then in effect will be shortened by setting the last business day prior to the effective time of the merger as the last day of the offering period. Pursuant to the terms of our employee stock purchase plan, the employees' accumulated payroll deductions will be used to purchase shares of our Class B common stock on the last business day prior to the effective time of the merger.

Material U.S. Federal Income Tax Consequences

The receipt of cash in exchange for shares of our common stock pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes. For U.S. federal income tax purposes, generally you will recognize gain or loss as a result of the merger measured by the difference, if any, between the amount of cash received in exchange for shares of our common stock pursuant to the merger and your adjusted tax basis in such shares.

You should read *The Merger* *Material U.S. Federal Income Tax Consequences* beginning on page 56 for a more complete discussion of the federal income tax consequences of the merger. Tax matters can be complicated, and the tax consequences of the merger to you will depend on your particular tax situation. We urge you to consult your tax advisor on the tax consequences of the merger to you.

Table of Contents

Regulatory Matters

Under the HSR Act, we cannot complete the merger until we and BT have notified the Antitrust Division of the U.S. Department of Justice, or the Antitrust Division, and the U.S. Federal Trade Commission, or FTC, of the merger, furnished them with certain information and materials and allowed the applicable waiting period to terminate or expire. We and BT filed notification and report forms under the HSR Act with the Antitrust Division and the FTC on November 22, 2004. The FTC has granted early termination of the waiting period under the HSR Act with respect to the merger, effective as of December 21, 2004.

In addition, we must make, if required, any filings with the European Commission as required by Council Regulation No. 139/2004. Under Council Regulation No. 139/2004, we may not complete the merger unless the required filing has been submitted to, and the transaction cleared by, the European Commission. Council Regulation No. 139/2004 provides for an initial Phase I waiting period of 25 working days following the filing of a complete notification to the European Commission, which can be extended to