

ZIX CORP
Form DEF 14A
April 24, 2008

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20529
SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934
Exchange Act of 1934 (Amendment No.)**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

ZIX CORPORATION

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

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:

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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):

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1) Amount Previously Paid:

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4) Date Filed:

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ZIX CORPORATION

2711 North Haskell Avenue

Suite 2200, LB 36

Dallas, Texas 75204-2960

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

To Be Held Tuesday, June 3, 2008

We will hold this year's annual shareholders' meeting on Tuesday, June 3, 2008, at 10:00 a.m. (registration to begin at 9:30 a.m.), Central Time. We will hold the meeting at Cityplace Conference Center, Turtle Creek I Room, 2711 North Haskell Avenue, Dallas, Texas 75204. At the meeting, we will ask you to consider and vote on the following proposals:

Proposal One, a proposal to elect Robert C. Hausmann, Charles N. Kahn III, James S. Marston, Antonio R. Sanchez III, Paul E. Schlosberg, and Richard D. Spurr as members of our Board of Directors;

Proposal Two, a proposal to ratify the selection of Whitley Penn LLP as our independent registered public accountants; and

Such other matters as may be properly brought before the meeting or any adjournment thereof.

If you held shares of our common stock at the close of business on April 14, 2008, the record date for the meeting, you are entitled to notice of the meeting or any adjournment thereof. All holders of our common stock as of the record date are entitled to vote on the proposals relating to the election of members of our Board of Directors as well as any other matters that are properly brought before the meeting. The stock transfer books will not be closed.

We would like you to attend the meeting in person but understand that you may not be able to do so. For your convenience, and to ensure that your shares are represented and voted according to your wishes, we have enclosed a proxy card for you to use. Please vote, sign, and date the proxy card and return it to us as soon as possible in the enclosed postage-paid envelope. If you attend the meeting in person, you may revoke your proxy and vote in person. We look forward to hearing from you.

By Order of the Board of Directors,

RONALD A. WOESSNER

Senior Vice President, General Counsel & Secretary

Dallas, Texas

April 25, 2008

YOUR VOTE IS IMPORTANT.

PLEASE VOTE EARLY EVEN IF YOU PLAN TO ATTEND THE ANNUAL MEETING.

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QUESTIONS AND ANSWERS

Although we encourage you to read this Proxy Statement in its entirety, we include this Question and Answer section to provide some background information and brief answers to several questions you might have about the enclosed proposals. In this Proxy Statement, we refer to Zix Corporation as the Company, Zix, ZixCorp, we, our, us.

Q. Why did I receive this Proxy Statement?

A. On or about April 25, 2008, we began mailing this Proxy Statement and accompanying proxy card to everyone who was a holder of our shares of common stock on the record date for our annual shareholders meeting (the Annual Meeting), which is April 14, 2008. We prepared this Proxy Statement to let our shareholders know when and where we will hold our Annual Meeting. This Proxy Statement:

provides you with information about the proposals that will be discussed and voted on at the Annual Meeting; and

provides you with updated information about our company.

Q. What will occur at the Annual Meeting?

A. First, we will determine whether enough shareholders are present at the Annual Meeting to conduct business. A shareholder will be deemed present at the Annual Meeting if the shareholder:

is present in person; or

is not present in person but has voted by proxy card prior to the Annual Meeting.

Except as otherwise described in this Proxy Statement, all holders of our common stock of record at the close of business on April 14, 2008, the record date, will be entitled to vote on matters presented at the Annual Meeting or any adjournment thereof. As of the record date, there were 62,832,243 shares of our common stock outstanding, held by or through 559 holders of record. Each share of our common stock is entitled to one vote. Our shareholders are entitled to cast an aggregate of 62,832,243 votes at the Annual Meeting. The holders of a majority, or 31,416,122, of the shares who are entitled to vote at the Annual Meeting must be represented at the meeting in person or by proxy to have a quorum for the transaction of business at the meeting and to act on the matters specified in the Notice. If holders of fewer than 31,416,122 shares are present at the Annual Meeting, we will adjourn or reschedule the meeting.

After each proposal has been voted on at the Annual Meeting, we will discuss and take action on any other matter that is properly brought before the meeting. Our transfer agent, Computershare Investor Services, LLC, will count the votes and act as inspector of election.

A representative of Whitley Penn LLP, our independent registered public accounting firm, is expected to be present at the Annual Meeting and will be afforded the opportunity to make a statement, if such representative so desires, and to respond to appropriate questions.

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If enough shareholders are present at the Annual Meeting to conduct business, then we will vote on the proposals outlined in this Proxy Statement and any other business that is properly brought before the meeting and any adjournments thereof.

We know of no other matters that will be presented for consideration at the Annual Meeting. If, however, other matters or proposals are presented and properly come before the meeting, the proxy holders intend to vote all proxies in accordance with their best judgment in the interest of Zix Corporation and our shareholders.

Q. What proposals are shareholders being asked to consider at the upcoming Annual Meeting?

A. Shareholders are being asked to consider two proposals at the Annual Meeting. The first proposal, which we refer to as Proposal One throughout this Proxy Statement, relates to the election of members of our Board of Directors (the Board of Directors or the Board). The directors to be elected at the Annual Meeting will serve until our next annual meeting of shareholders. The second proposal, which we refer to as Proposal Two throughout this Proxy Statement, is a proposal to ratify the selection of Whitley Penn LLP as our independent registered public accounting firm.

Q. Why have I received more than one Proxy Statement?

A. If you received more than one proxy statement, your shares are probably registered differently or are in more than one account. Please vote each proxy card that you receive.

Q. How do I vote if I am not planning to attend the Annual Meeting?

A. In addition to voting in person at the Annual Meeting, you may mark your selections on the enclosed proxy card, date and sign the card and return the card in the enclosed postage-paid envelope.

Please understand that voting by any means other than voting in person at the Annual Meeting has the effect of appointing Richard D. Spurr, our Chairman, Chief Executive Officer and President, and Barry W. Wilson, our Chief Financial Officer and Treasurer, as your proxies. They will be required to vote on the proposals described in this Proxy Statement exactly as you have voted. However, if any other matter requiring a shareholder vote is properly raised at the meeting, then Messrs. Spurr and Wilson will be authorized to use their discretion to vote on such issues on your behalf.

We encourage you to vote now even if you plan to attend the Annual Meeting in person. If your shares are in a brokerage account, you may receive different voting instructions from your broker.

Q. What if I want to change my vote?

A. You may revoke your vote on any proposal at any time before the Annual Meeting for any reason. To revoke your proxy before the meeting, write to our Secretary, Ronald A. Woessner, at 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960. You will need to include a copy of your earlier voted proxy and may be required to provide other information to facilitate the administrative steps actually required to properly revoke your prior proxy and properly record the revocation. You may also come to the Annual Meeting and change

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your vote in writing. You will need to bring a copy of your earlier voted proxy and may be required to provide other information to facilitate the administrative steps actually required to properly revoke your prior proxy and properly record the revocation.

Q. Where can I find the voting results of the Annual Meeting?

A. We will announce the voting results at the Annual Meeting and will publish the results in our quarterly report on Form 10-Q for the second quarter of 2008 ending on June 30, 2008. We will file that report with the SEC by August 8, 2008, and you can get a copy by contacting either our Investor Relations office at (214) 515-7357 or the Securities Exchange Commission (SEC) at (800) SEC-0330 or www.sec.gov.

Q. Where can I find additional information? Who can help answer my questions?

A. You should carefully review the entire Proxy Statement, which contains important information regarding the proposals, before voting. The section under the heading **WHERE YOU CAN FIND MORE INFORMATION** below, describes additional sources from which to obtain this Proxy Statement, our public filings under the Securities Exchange Act of 1934, as amended (the Exchange Act), and other information about ZixCorp. Additionally, in accordance with new rules adopted by the SEC, a copy of this Proxy Statement will be available on the Company s web site under Investor Relations.

If you would like additional copies of this Proxy Statement or other documents that we have filed with the SEC that are incorporated by reference into this Proxy Statement, free of charge, or if you have questions about the proposals or the procedures for voting your shares, you should contact: Zix Corporation, Attention: Ronald A. Woessner, Secretary, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960, Telephone: (214) 370-2000.

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ZIX CORPORATION
PROXY STATEMENT FOR THE ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD TUESDAY, JUNE 3, 2008
INFORMATION CONCERNING SOLICITATION AND VOTING

General

The enclosed proxy is solicited on behalf of our Board of Directors. At the Annual Meeting to be held on Tuesday, June 3, 2008, at 10:00 a.m. (registration to begin at 9:30 a.m.) Central Time, and at any adjournment, continuation or postponement of the Annual Meeting for the purposes set forth herein and in the accompanying Notice of Annual Meeting of Shareholders. The Annual Meeting will be held at Cityplace Conference Center, Turtle Creek I Room, 2711 North Haskell Avenue, Dallas, Texas 75204.

These proxy solicitation materials were first mailed or given to all shareholders entitled to vote at the Annual Meeting on or about April 25, 2008.

Purpose of Annual Meeting

As described above, the purpose of the Annual Meeting is to obtain approval for the proposals described in this Proxy Statement and such other business as may properly come before the Annual Meeting, including any adjournment, continuation, or postponement thereof.

Vote Required

With respect to Proposal One, votes may be cast FOR or WITHHELD from each director nominee. The six nominees receiving the highest number of FOR votes will be elected as directors. This number is called a plurality. Votes that are WITHHELD from any director nominee will be counted in determining whether a quorum has been reached but will not affect the outcome of the vote. Assuming a quorum is present, the affirmative vote of a plurality of the shares of common stock voted and entitled to vote for the election of directors is required for the election of directors. In the election of directors, shareholders are not entitled to cumulate their votes or to vote for a greater number of persons than the number of nominees named in this Proxy Statement.

With respect to Proposal Two, the affirmative vote of a majority of the shares of our common stock represented at the Annual Meeting and entitled to vote on the matter, if a quorum is present, is required to approve each of the Proposals. The same vote is generally required for action on any other matters that may properly come before the Annual Meeting.

Record Date and Shares Outstanding

Only shareholders who owned shares of our common stock at the close of business on April 14, 2008, referred to in this Proxy Statement as the Record Date, are entitled to notice of, and to vote at, the Annual Meeting. As of the Record Date, 62,832,243 shares of our common stock were outstanding and entitled to vote at the Annual Meeting.

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Revocability of Proxies

You may revoke your proxy at any time before it is exercised. Execution of the Proxy will not affect your right to attend the Annual Meeting in person. Revocation may be made prior to the Annual Meeting by written revocation or through a duly executed proxy bearing a later date sent to Zix Corporation, Attention: Ronald A. Woessner, Secretary, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960; or your Proxy may be revoked personally at the Annual Meeting by written notice to the Secretary at the Annual Meeting prior to the voting of the Proxy. Any revocation sent to ZixCorp must include the shareholder's name and must be received prior to the Annual Meeting to be effective.

How Your Proxy Will Be Voted

In the absence of specific instructions to the contrary, shares represented by properly executed proxies received by ZixCorp, including unmarked proxies, will be voted to approve the proposals. In addition, if any other matters properly come before the Annual Meeting, it is the intention of the persons named in the enclosed proxy card to vote the shares they represent as directed by the Board of Directors. We have not received notice of any other matters that may properly be presented at the Annual Meeting.

Quorum

The presence, in person or by proxy, of the holders of a majority of the outstanding shares of our common stock entitled to vote at the Annual Meeting is necessary to constitute a quorum at the Annual Meeting. As there were 62,832,243 shares outstanding and entitled to vote at the Annual Meeting as of the Record Date, we will need at least 31,416,122 shares present in person or by proxy at the Annual Meeting for a quorum to exist.

Dissenters' Rights

Under Texas law, shareholders are not entitled to dissenters' rights with respect to the proposals.

Voting

Tabulation

Votes of shareholders entitled to vote who are present at the Annual Meeting in person or by proxy and abstentions are counted as present or represented at the meeting for purposes of determining whether a quorum exists. For Proposal One, the six nominees receiving the highest number of FOR votes will be elected as directors. The affirmative vote of a majority of the shares of our common stock entitled to vote on the matter and present in person or represented by proxy at the Annual Meeting is required to approve Proposal Two and is generally required for action on any other matters that may properly come before the Annual Meeting.

Abstentions

Abstentions occur when a shareholder entitled to vote and present in person or represented by proxy at the Annual Meeting affirmatively votes to abstain. Votes in abstention are considered present for purposes of calculating a quorum but do not count as a vote FOR or AGAINST any matter. With respect to Proposal One, a WITHHELD vote will not be counted as

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a vote FOR or AGAINST the election of directors and will not affect the outcome of the vote. With respect to Proposal Two, abstentions do not count as a vote FOR or AGAINST the proposal, but they will have the same effect as a negative vote on these proposals because abstentions will be included in tabulations of the shares of common stock entitled to vote for purposes of determining whether Proposal Two has been approved.

Broker Non-Votes

A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have the discretionary voting power with respect to that item and has not received instructions from the beneficial owner. If your shares are held in a brokerage account and you do not vote, your brokerage firm could:

Vote your shares, if permitted by the rules of the New York Stock Exchange; or

Leave your shares unvoted.

Under applicable rules, brokers who hold shares in street name have the authority to vote in favor of Proposal One and Proposal Two if they do not receive contrary voting instructions from beneficial owners. Under applicable law, if a broker has not received voting instructions with respect to certain shares and gives a proxy for those shares, but does not vote the shares on a particular matter, those shares will not affect the outcome of the vote with respect to that matter. In accordance with our Restated Bylaws, such broker non-votes will be counted for purposes of determining the presence or absence of a quorum for the transaction of business, but will not be counted for purposes of determining the number of votes cast with respect to a proposal. Therefore, broker non-votes will not be included in the tabulation of the voting results and will have no effect with respect to the approval of the proposals being considered at the Annual Meeting.

Solicitation of Proxies

This solicitation is being made by mail on behalf of our Board of Directors. We will bear the expense of the preparation, printing and mailing of the enclosed proxy card, Notice of Annual Meeting of Shareholders and this Proxy Statement, and any additional material relating to the Annual Meeting that may be furnished to our shareholders by our Board subsequent to the furnishing of this Proxy Statement. We have engaged Georgeson Shareholder to assist in the solicitation of proxy materials from shareholders at a fee of approximately \$6,500 plus reimbursement of reasonable out-of-pocket expenses. Proxies may also be solicited without additional compensation by our officers or employees by telephone, facsimile transmission, e-mail, or personal interview. We will reimburse banks and brokers who hold shares in their name or custody, or in the name of nominees for others, for their out-of-pocket expenses incurred in forwarding copies of the proxy materials to those persons for whom they hold such shares. To obtain the necessary representation of shareholders at the Annual Meeting, supplementary solicitations may be made by mail, telephone, facsimile transmission, e-mail, or personal interview by our officers or employees, without additional compensation, or selected securities dealers. We anticipate that the cost of such supplementary solicitations, if any, will not be material.

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Shareholders Proposals

If you would like to submit a proposal to be included in next year's annual proxy statement, you must submit your proposal in writing so that we receive it no later than December 26, 2008. We will include your proposal in our next annual proxy statement if it is a proposal that we would be required to include in our proxy statement pursuant to the rules of the SEC. Under Rule 14a-8 of the Exchange Act, proposals of shareholders must conform to certain requirements as to form and may be omitted from the proxy materials in certain circumstances. To avoid unnecessary expenditures of time and money, you are urged to review this rule and, if questions arise, consult legal counsel prior to submitting a proposal to us.

The SEC rules also establish a different deadline for submission of shareholder proposals that are not intended to be included in our next annual proxy statement. If a shareholder intends to submit a proposal at the next annual meeting of shareholders and the proposal is not intended to be included in our proxy statement relating to such meeting, the shareholder must give us proper notice no later than March 6, 2009. Even if the proper notice is received on or prior to March 6, 2009, the proxies named in management's proxy for that annual meeting of stockholders may nevertheless exercise their discretionary authority with respect to such matter by advising stockholders of such proposal and how they intend to exercise their discretion to vote on such matter, unless the stockholder making the proposal solicits proxies with respect to the proposal to the extent required by Rule 14a-4(c)(2) under the Securities Exchange Act of 1934, as amended.

All notices of proposals, whether or not to be included in our proxy materials, should be directed to our Secretary, Ronald A. Woessner, at our principal executive offices at 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960.

Householding of Proxy Materials

The SEC has adopted rules that permit companies and intermediaries (*e.g.*, brokers) to satisfy the delivery requirements for proxy statements and annual reports with respect to two or more shareholders sharing the same address by delivering a single proxy statement addressed to those shareholders and enclosing separate proxy cards for each shareholder. This process, which is commonly referred to as "householding," potentially eliminates some duplicative mailings to shareholders and reduces our mailing costs.

For this Annual Meeting, a number of brokers with account holders who are shareholders of ZixCorp will be "householding" our proxy materials. A single proxy statement will be delivered to multiple shareholders sharing an address unless contrary instructions have been received from the affected shareholders. Once you have received notice from your broker that they will be "householding" communications to your address, "householding" will continue until you are notified otherwise or until you revoke your consent. We will undertake to deliver promptly upon written or oral request, a separate copy of this proxy statement and accompanying annual report, to any security holder at a shared address to which a single copy of the documents was delivered. Please direct your request to Zix Corporation, Attention: Ronald A. Woessner, Secretary, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960 or contact Ronald A. Woessner at (214) 370-2000. Furthermore, if, at any time in the future, you no longer wish to participate in "householding" and would prefer to receive a separate proxy statement and annual report, please so advise your broker, and send a copy of the communication to Zix Corporation, Attention: Ronald A. Woessner, Secretary, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960 or contact Ronald A. Woessner at (214) 370-2000. Shareholders who currently receive multiple copies of the proxy statement at their address and would like to request "householding" of their communications should contact their broker.

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**PROPOSAL ONE
ELECTION OF DIRECTORS**

We will vote on the election of six members of our Board of Directors at the Annual Meeting. Each director will serve until the next annual meeting of shareholders and until the director's successor is duly elected and qualified, unless earlier removed in accordance with our Restated Bylaws. Officers serve at the discretion of our Board of Directors.

The nominees for election to our Board are Robert C. Hausmann, Charles N. Kahn III, James S. Marston, Antonio R. Sanchez III, Paul E. Schlosberg, and Richard D. Spurr.

Name	Principal Occupation	Director Since
Robert C. Hausmann	Consultant	November 2005
Charles N. Kahn III	President, American Federation of Hospitals	June 2005
James S. Marston	Private Investor	September 1991
Antonio R. Sanchez III	President, Sanchez Oil & Gas Corporation	May 2003
Paul E. Schlosberg	Chairman and Chief Executive Officer, INCA Group LLC	June 2005
Richard D. Spurr	Chairman, Chief Executive Officer and President, Zix Corporation	May 2005

For biographical and other information regarding the nominees for director, please *see* **OTHER INFORMATION YOU NEED TO MAKE AN INFORMED DECISION - Directors, Executive Officers, and Significant Employees** below. For information on our directors' compensation, *see* **COMPENSATION OF DIRECTORS AND EXECUTIVE OFFICERS** below.

Each of the persons nominated for election to our Board of Directors has agreed to stand for election. However, should any nominee become unable or unwilling to accept nomination or election, no person will be substituted in his stead. The Board of Directors, in accordance with our Restated Bylaws, may by resolution reduce the number of members of our Board of Directors accordingly. Our Board of Directors has no reason to believe that any of the nominees will be unable or unwilling to serve if elected, and to the knowledge of the Board, each of the nominees intends to serve the entire term for which election is sought.

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR EACH OF THE NOMINEES FOR DIRECTOR SET FORTH ABOVE.

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**PROPOSAL TWO
RATIFICATION OF APPOINTMENT OF INDEPENDENT
REGISTERED PUBLIC ACCOUNTANTS**

The Audit Committee of the Board has appointed Whitley Penn LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2008. Services provided to the Company and its subsidiaries by Whitley Penn LLP in fiscal 2007 are described under **INDEPENDENT REGISTERED PUBLIC ACCOUNTANTS** below.

We are asking our shareholders to ratify the selection of Whitley Penn LLP as our independent registered public accounting firm. Although ratification is not required by our Restated Bylaws or otherwise, the Board is submitting the selection of Whitley Penn LLP to our shareholders for ratification as a matter of good corporate practice.

Representatives of Whitley Penn LLP will be present at the annual meeting to respond to appropriate questions and to make such statements as they may desire.

The affirmative vote of a majority of the shares of our common stock entitled to vote on the matter and present in person or represented by proxy at the Annual Meeting is required to approve Proposal Two. Abstentions will be counted as represented and entitled to vote and will, therefore, have the effect of a negative vote.

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR RATIFICATION OF THE APPOINTMENT OF WHITLEY PENN LLP AS THE COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR FISCAL 2008.

In the event shareholders do not ratify the appointment, the appointment will be reconsidered by the Audit Committee and the Board. Even if the selection is ratified, the Audit Committee in its discretion may select a different registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of the Company and our shareholders and otherwise complies with all regulations of the Securities and Exchange Commission regarding a change in registered public accounting firm.

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The following table sets forth, as of March 31, 2008, the names of our directors, director nominees, executive officers, and other significant employees and their respective ages and positions:

Name	Age	Position
Robert C. Hausmann ⁽¹⁾	44	Director
Charles N. Kahn III ⁽²⁾⁽³⁾	56	Director
James S. Marston ⁽¹⁾⁽³⁾	74	Director
Russell J. Morgan	48	Vice President, Client Services
David J. Robertson	49	Vice President, Engineering
Antonio R. Sanchez III ⁽³⁾	34	Director
Paul E. Schlosberg ⁽¹⁾⁽²⁾⁽³⁾	57	Director
Richard D. Spurr	54	Chairman of the Board, CEO and President
Barry W. Wilson	59	Chief Financial Officer and Treasurer
Ronald A. Woessner	50	S.V.P., General Counsel and Secretary

(1) Member of the Audit Committee

(2) Member of the Nominating and Corporate Governance Committee

(3) Member of the Compensation Committee

Robert C. Hausmann was elected to our Board in November 2005. He is currently a consultant to public and private companies with respect to operational and financial market matters, including Sarbanes-Oxley and systems and process re-engineering. Formerly, Mr. Hausmann served as Vice President and Chief Financial Officer of Securify, Inc. from September 2002 through June 2005. From September 1999 through September 2002, Mr. Hausmann served as Vice President and Chief Financial Officer of Resonate, Inc. and helped manage the company's initial public offering. Previously, he served as operations partner and chief financial officer of Mohr, Davidow Ventures, a Silicon Valley-based venture capital partnership. Mr. Hausmann holds an M.B.A. from Santa Clara University and a B.A. in Finance and Accounting from Bethel College.

Charles N. Kahn III was elected to our Board in June 2005. He is president of the Federation of American Hospitals, the national advocacy organization for investor-owned hospitals and health systems. Previously, he served as executive vice president and president for the Health Insurance Association of America. As a staff director for the Health Subcommittee of the House Ways and Means Committee from 1995-1998, Kahn helped bring about HIPAA and the Medicare provisions of the 1997 Balanced Budget Act. In addition to teaching health policy at Johns Hopkins University, George Washington University, and Tulane University, he has numerous academic and advisory appointments. He holds a Bachelor of Arts from Johns Hopkins University and a Masters of Public Health from Tulane University.

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James S. Marston was elected to our Board in September 1991. From September 1987 through February 1998, Mr. Marston served as a Senior, or Executive, Vice President and the Chief Information Officer of APL Limited, a U.S.-based intermodal shipping company. Between 1986 and 1987, Mr. Marston served as President of AMR Technical Training Division, AMR Corporation. From 1982 until 1986, he was Vice President of Data Processing and Communications for American Airlines, in which position he was in charge of the Sabre reservations system and related technologies.

Russell J. Morgan has served as Vice President, Client Services since joining our company in September 2002. From February 1997 until August 2002, he worked at Entrust, Inc. where he held a variety of senior management positions, including director, professional services and senior director, Entrust.net. At Entrust, Mr. Morgan was responsible for founding and building the professional services organization and building and operating a WebTrust certified secure data center for issuing digital certificates to business customers. Prior to February 1997, Mr. Morgan held a number of key management positions at Lockheed Martin, where he specialized in secure messaging and military command and control systems. Mr. Morgan is a professional engineer with over 20 years experience in delivering customer-focused technology solutions.

David J. Robertson has served as Vice President, Engineering since joining our company in March 2002. Mr. Robertson has over 25 years of experience in the Internet and Telecommunications industries, with specific expertise in hosted network architecture, electronic security, communication protocols, software systems and wireless infrastructure. Over the course of a 20-year tenure with Nortel Networks, he held technology Vice President positions in the Wireless, Carrier and Enterprise Divisions and subsequently assisted with the creation of technical startup companies with STARTech Early Ventures. Mr. Robertson has a Bachelor of Science Degree in Electrical Engineering from the University of Waterloo and a Master's Degree in Engineering from Carleton University, Canada. He is an ongoing contributor in several industry standards groups and serves with the City of Richardson Chamber of Commerce.

Antonio R. Sanchez III was elected to our Board in May 2003. He has served as President of Sanchez Oil & Gas Corporation since March 2006, and prior to that he served as Executive Vice President since October 2001. He is a graduate of Georgetown University where he received a Bachelor of Science Degree in Business Administration with a concentration on Accounting and Finance and a minor in Economics. Mr. Sanchez also holds an M.B.A. degree from Harvard University. From 1999 through 2001, he worked at our company in a variety of positions, including sales and marketing, product development and investor relations. From 1997 through 1999, he was employed as an analyst in the mergers and acquisitions group in the New York City office of JP Morgan. He is currently involved in the day-to-day operations of Sanchez Oil & Gas Corporation.

Paul E. Schlosberg was elected to our Board in June 2005. He brings nearly 30 years of experience in investment banking. He is currently the founder, chairman, and CEO of INCA Group LLC, which facilitates corporate restructuring, merger, acquisition, and capital funding activities for both public and private enterprises. From 1994 to 2003 he served in various capacities at the investment banking firms of First Southwest Asset Management, Inc. and First Southwest Company, including chairman and CEO, president and chief operating officer, and vice chairman of the board of directors. He is also a member of the NASDAQ Stock Market, Inc. Listing Qualifications Committee, an advisor to three private investment funds, and a current member of the board of the Center for BrainHealth at the University of Texas at Dallas and a past member of the American Heart Association's Dallas chapter board. From 1982 to 1994 he worked for Bear, Stearns & Co. as account executive and associate director. He holds a Bachelor of

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Business Administration from the University of Texas and a Master of Business Administration degree from Southern Methodist University.

Richard D. Spurr joined our company in January 2004 and has served as Chief Executive Officer since March 2005 and as President and Chief Operating Officer since joining us. He was elected to our Board in May 2005 and appointed Chairman of the Board on February 1, 2006. Mr. Spurr brings 30 years of global IT experience in building sales, marketing, service and operations in both corporate and fast-growing environments, previously as Senior Vice President, Worldwide Sales, Marketing and Business Development for Securify, Inc. beginning March 2003. From 1974 until 1990, Mr. Spurr worked for IBM where, as Regional Manager, he was responsible for over 1,000 employees, and as Group Director in Tokyo, for a \$1.2 billion business throughout the Asia Pacific Region. Mr. Spurr then took two start-ups, SEER Technologies, Inc. and Entrust, Inc. (where he served in several senior executive positions), from early stages through IPOs and beyond.

Barry W. Wilson joined our company in November 1989 and has worked in a variety of accounting and finance department functions, including two years as the corporate controller prior to being named the company's chief financial officer. Mr. Wilson left the company in May 1998 as part of the divestiture of certain businesses, during which time he was chief financial officer at Airco Industries. He subsequently returned to our company in May 2001. Prior to originally joining the company, Mr. Wilson held a variety of accounting and finance department positions at Armstrong World Industries, Inc. and Wood & Fence Products Co., Inc. Mr. Wilson is a licensed Certified Public Accountant with a degree in accounting from Point Park University, which is located in Pittsburgh, Pennsylvania.

Ronald A. Woessner joined our company in April 1992 as General Counsel, when we operated under the name Amtech Corporation (NASDAQ: AMTC) and sold and serviced radio frequency identification technologies (RFID) for electronic toll and traffic management, local access control, and other applications, and has served as Senior Vice President and corporate Secretary since 2000. He was previously a corporate and securities attorney with the Dallas-based law firm of Johnson & (Swanson) Gibbs, P.C., where he specialized in public and private equity and debt financings, mergers and acquisitions, and leveraged buy-outs. Mr. Woessner is a *summa cum laude* graduate of Texas A&M University, where he received a Bachelor of Science degree, and is a *magna cum laude* and *Order of the Coif* graduate of the University of Minnesota Law School, where he served on the *Minnesota Law Review*. He holds a compliance and ethics professional certification from the *Society of Corporate Compliance and Ethics* and is also a certified Toastmaster by Toastmasters International.

Section 16(a) Beneficial Ownership Reporting Compliance

Under the securities laws of the U.S., our directors, officers and any beneficial owner of more than 10% of our outstanding common stock ("insiders") are required to report their initial ownership of our common stock and any subsequent changes in their ownership to the SEC. The SEC's rules require insiders to provide us with copies of all reports that they file with the SEC pursuant to Section 16(a) of the Exchange Act. The SEC has established specific due dates for these filings and we are required to disclose any failure to file by those dates. Based upon a review of filings with the SEC and written representations that no other reports were required, we believe that all of our directors and executive officers complied during fiscal 2007 with the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934.

Table of Contents**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth the shares of our common stock beneficially owned by (1) each of our directors, (2) our named executive officers, (3) all of our directors and executive officers as a group, and (4) all persons known by us to beneficially own more than 5% of our outstanding common stock, as of April 3, 2008:

Beneficial Owner⁽²⁾	Amount and Nature of Beneficial Ownership⁽¹⁾	
	Number of Common Stock Shares Beneficially Owned⁽³⁾	Percentage of Total Common Stock Outstanding⁽³⁾
Robert C. Hausmann ⁽⁴⁾	46,542	*
George W. Haywood ⁽⁵⁾ c/o Cronin & Vris, LLP 380 Madison Avenue, 24th Floor New York, New York 10017	4,840,900	7.7%
Charles N. Kahn III ⁽⁶⁾	81,995	*
James S. Marston ⁽⁴⁾	388,245	*
Russell J. Morgan ⁽⁷⁾	252,083	*
David J. Robertson ⁽⁸⁾	422,811	*
Antonio R. Sanchez III ⁽⁹⁾	755,036	1.2%
Paul E. Schlosberg ⁽⁴⁾	78,545	*
Richard D. Spurr ⁽¹⁰⁾	1,888,566	3.0%
Barry W. Wilson ⁽⁴⁾	80,572	*
Ronald A. Woessner ⁽¹¹⁾	282,416	*
TOTAL	9,117,712	14.5%
All directors and executive officers as a group (10 persons) ⁽¹²⁾	4,276,812	6.8%

* Denotes ownership of less than 1%.

(1) Reported in accordance with the beneficial ownership rules of the Securities and Exchange Commission. Unless otherwise noted, each shareholder listed in the table has both sole voting and sole investment power over the common

stock shown as
beneficially
owned, subject to
community
property laws
where applicable.

- (2) Unless otherwise noted, the address for each beneficial owner is c/o Zix Corporation, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960.
- (3) Percentages are based on the total number of shares of our common stock outstanding at April 3, 2008, which was 62,832,243 shares. Shares of our common stock that were not outstanding but could be acquired upon exercise of an option or other convertible security within 60 days of April 3, 2008 are deemed outstanding for the purpose of computing the percentage of outstanding shares beneficially owned by a particular person. However, such shares are not deemed to be

outstanding for the purpose of computing the percentage of outstanding shares beneficially owned by any other person.

- (4) The person in question has the right to acquire these shares under outstanding stock options that are currently exercisable or that become exercisable within 60 days of April 3, 2008.

- (5) As reported in Mr. Haywood's most recent Schedule 13G, filed February 14, 2008. Of the shares noted,
 - (i) Mr. Haywood has sole power to vote, or direct the voting of, or dispose, or direct the disposition of, 3,842,900 shares;
 - (ii) Mr. Haywood shares power to vote, or direct the voting of, or dispose, or direct the disposition of, 998,000 shares;
 - (iii) included as shares for which there exists sole

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voting and dispositive power are (a) 45,900 shares owned by Mr. Haywood's minor children, which children have the right to receipt of dividends from, and proceeds from the sale of, such shares and (b) 264,000 shares underlying warrants; and (iv) included as shares for which there exists shared voting and dispositive power are 998,000 shares owned by Mr. Haywood's spouse. Accordingly, Mr. Haywood's spouse would have the sole right to the receipt of dividends from, and the proceeds from the sale of, such shares.

- (6) Includes (i) 77,545 shares that Mr. Kahn has the right to acquire under outstanding stock options that are currently

exercisable or will become exercisable within 60 days of April 3, 2008 and (ii) 1,104 shares issuable upon exercise of certain warrants.

(7) Includes 249,583 shares that Mr. Morgan has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of April 3, 2008.

(8) Includes 397,917 shares that Mr. Robertson has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of April 3, 2008.

(9) Includes (i) 170,121 shares held by a trust for which Mr. Sanchez serves as co-trustee; (ii) 11,037 shares issuable upon exercise of

certain warrants;
and (iii) 166,878
shares that
Mr. Sanchez has
the right to
acquire under
outstanding
stock options
that are
currently
exercisable or
that become
exercisable
within 60 days
of April 3, 2008.

- (10) Includes
(i) 1,783,333
shares that
Mr. Spurr has
the right to
acquire under
outstanding
stock options
that are
currently
exercisable or
that become
exercisable
within 60 days
of April 3, 2008
and (ii) 5,519
shares issuable
upon exercise of
certain warrants.

- (11) Includes
(i) 227,916
shares that
Mr. Woessner
has the right to
acquire under
outstanding
stock options
that are
currently
exercisable or
that become
exercisable
within 60 days
of April 3, 2008

and (ii) 2,500 shares held by a trust for which Mr. Woessner serves as trustee.

- (12) Includes
- (i) 3,490,411 shares that the group has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of April 3, 2008
 - and (ii) 17,660 shares issuable upon exercise of certain warrants.

CORPORATE GOVERNANCE

Our Board in General

Our business is managed under the direction of our Board of Directors. Our Board presently consists of six members. The names of the Board members and their professional experience is described above under the caption

OTHER INFORMATION YOU NEED TO MAKE AN INFORMED DECISION Directors, Executive Officers and Significant Employees. The Board meets during the year to review significant developments and to act on matters requiring Board approval. The Board met on five occasions during the year ended December 31, 2007. Each of the current directors attended at least 75% of all meetings of our Board called during the time he served as a director during 2007 and all meetings of each committee of our Board on which he served during 2007. The members of our Board are not required to attend our annual meeting of shareholders. None of our outside directors attended the 2007 Annual Meeting of Shareholders.

Our Board has a standing Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee to devote attention to specific subjects and to assist our Board in discharging its responsibilities. Pertinent information about our Board's committees are set forth below.

Corporate Governance Requirements and Board Member Independence

We are in compliance with the current corporate governance requirements imposed by the Sarbanes-Oxley Act of 2002 and the NASDAQ Marketplace Rules. We will continue to modify our policies and procedures to ensure compliance with developing standards in the corporate governance area. Set forth below is information regarding our compliance with

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applicable corporate governance, our corporate governance policies and procedures, and information pertaining to our Board.

Our Board has determined that all of our Board members other than the Company's CEO are independent in accordance with the published listing requirements of NASDAQ. The NASDAQ independence definition includes a series of objective tests, such as that the director is not an employee of the company and has not engaged in various types of business dealings with the company. In addition, as further required by the NASDAQ Marketplace Rules, our Board has made a subjective determination as to each independent director that no relationships exist which, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In determining whether Mr. Sanchez qualified as independent, our Board considered the fact that Mr. Sanchez had previously served as an employee of the Company.

Nominating and Corporate Governance Committee

General

Our Board has established a standing Nominating and Corporate Governance Committee. Our Nominating and Corporate Governance Committee is currently comprised of Charles N. Kahn III and Paul E. Schlosberg and is chaired by Mr. Kahn. Our Board has determined that each member of the Nominating and Corporate Governance Committee qualifies as independent in accordance with the published listing requirements of NASDAQ.

The Nominating and Corporate Governance Committee operates under a written charter that is available on our website at www.zixcorp.com under the heading Corporate Governance. Under the charter, the committee's principal responsibilities include: (i) identifying individuals qualified to become members of our Board and recommending candidates for reelection as directors; (ii) developing and recommending to the Board a set of corporate governance principles applicable to our company; and (iii) taking a leadership role in shaping the corporate governance of our company. The Nominating and Corporate Governance Committee met on two occasions during the year ended December 31, 2007.

Selection of Director Nominees

The Nominating and Corporate Governance Committee has a policy with respect to the consideration of director candidates recommended by shareholders. The policy provides that any shareholder of record who is entitled to vote for the election of directors at a meeting called for that purpose may nominate persons for election to our Board of Directors, subject to the following requirements. The Nominating and Corporate Governance Committee will consider director nominees recommended by our shareholders, assuming compliance with the process.

A shareholder desiring to nominate a person for election to our Board of Directors must send a written notice to our General Counsel, at our principal executive offices at 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960, no later than December 26, 2008. The written notice is to include the following information: (i) the name of the candidate; (ii) the address, phone and fax number of the candidate; (iii) a statement signed by the candidate that certifies that the candidate wishes to be considered for nomination to our Board of Directors and that explains why the candidate believes that he or she meets the minimum Director Qualification Criteria (discussed below) and would otherwise be a valuable addition to our Board of Directors; (iv) the number of shares of our stock that are beneficially owned by such candidate; and (v) all information required to be disclosed in solicitations of proxies for election of directors, or as

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otherwise required, in each case pursuant to Regulation 14A under the Exchange Act. The final selection of director nominees is within the sole discretion of our Board.

Our Board of Directors has set forth minimum qualifications, or Director Qualification Criteria, that a recommended candidate must possess. Generally speaking, all candidates, including director nominees recommended by our shareholders, are to have the following characteristics if they are to be considered to serve on our Board of Directors:

The highest personal and professional ethics, integrity and values;

Broad-based skills and experience at an executive, policy-making level in business, academia, government, or technology areas relevant to our activities;

A willingness to devote sufficient time to become knowledgeable about our business and to carry out his or her duties and responsibilities effectively;

A commitment to serve on our Board for two years or more at the time of his or her initial election; and

Be between the ages of 30 and 70 at the time of his or her designation as an independent director of the Board.

Candidates who will serve on the Audit Committee must have the following additional characteristics:

All candidates must meet additional independence requirements in accordance with applicable rules and regulations;

All candidates must have the ability to read and understand fundamental financial statements, including a company's balance sheet, statement of operations and statement of cash flows; and

At least one member of the Audit Committee must meet the requirements of an audit committee financial expert under SEC rules and regulations.

Other factors considered in candidates may include, but are not limited to, the following:

Experience in the technology areas relevant to our activities;

Experience as a director or executive officer of a large public company;

Experience as an independent public accountant;

Significant academic experience in a field of importance to our company;

Recent experience in an operating role at a large company; and

Other relevant information.

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The Nominating and Corporate Governance Committee's process for identifying and evaluating director candidates is as follows:

The Chairman of our Board, the Nominating and Corporate Governance Committee or other Board members identify the need to add new members to the Board with specific criteria or to fill a vacancy on the Board.

The Chair of the Nominating and Corporate Governance Committee initiates a search, working with staff support and seeking input from the members of the Board and senior management, and hiring a search firm, if necessary.

The Nominating and Corporate Governance Committee identifies an initial slate of candidates, including any recommended by shareholders and accepted by the Nominating and Corporate Governance Committee, after taking account of the Director Qualification Criteria.

The Nominating and Corporate Governance Committee determines if any Board members have contacts with identified candidates and if necessary, uses a search firm.

The Chairman of the Board (and, if a different person) the Chief Executive Officer and at least one member of the Nominating and Corporate Governance Committee interview prospective candidate(s).

The Nominating and Corporate Governance Committee keeps the Board informed of the selection progress.

The Nominating and Corporate Governance Committee meets to consider and approve final candidate(s).

These procedures have not been materially modified since the Company's disclosure of these procedures in its proxy statement in connection with its 2007 Annual Meeting of Shareholders. These procedures do not create a contract between our company, on the one hand, and a company shareholder(s) or a candidate recommended by a shareholder(s), on the other hand. We reserve the right to change these procedures at any time, consistent with the requirements of applicable law, rules and regulations. There are no material differences from these procedures for evaluating director nominees recommended by a security holder.

The Nominating and Corporate Governance Committee presents selected candidate(s) to the Board and seeks full Board endorsement of such candidate(s). There is no third party that we currently pay to assist in identifying or evaluating potential director nominees. The Nominating and Corporate Governance Committee's process for identifying and evaluating nominees for directors will not materially differ based on whether or not the nominee is recommended by a security holder.

Audit Committee

General

Our Board has established a standing Audit Committee. The Audit Committee oversees the Company's financial reporting process on behalf of the Board of Directors, pursuant to a written charter adopted by our Board that is available on our website at www.zixcorp.com under the heading Corporate Governance.

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Our Audit Committee is currently comprised of Robert C. Hausmann, James S. Marston and Paul E. Schlosberg and is chaired by Mr. Hausmann. Our Board has determined that all three members of the Audit Committee satisfy the independence and other requirements for audit committee membership required by the Marketplace Rules of NASDAQ and the SEC. The Audit Committee met on ten occasions during the year ended December 31, 2007. Our Board has determined that each Audit Committee member has sufficient knowledge in reading and understanding our financial statements to serve on the Audit Committee.

The Audit Committee also includes at least one independent member who is determined by our Board to meet the qualifications of an audit committee financial expert in accordance with SEC rules, including that the person meets the relevant definition of an independent director. Mr. Hausmann, an independent director, has been determined by our Board to be an audit committee financial expert. Shareholders should understand the following with respect to Mr. Hausmann's designation as such: (i) this is a disclosure requirement of the SEC related to Mr. Hausmann's experience and understanding with respect to certain accounting and auditing matters; (ii) Mr. Hausmann will not be deemed to be an expert for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933, as a result of being designated or identified as an audit committee financial expert; and (iii) the designation or identification does not impose upon Mr. Hausmann any duties, obligations, or liability that are greater than those generally imposed on him as a member of the Audit Committee and our Board in the absence of such designation.

Compensation Committee

General

Our Board has the plenary authority to determine the compensation payable to the Company's employees, consultants, and directors. The Board has established a standing Compensation Committee to assist it in compensation decisions. Our Compensation Committee is currently comprised of Charles N. Kahn III, James S. Marston, Paul E. Schlosberg and Antonio R. Sanchez III and is chaired by Mr. Marston. Our Board has determined that each member of the Compensation Committee qualifies as independent in accordance with the published listing requirements of NASDAQ.

The Compensation Committee operates under a written charter that is available on our website at www.zixcorp.com under the heading Corporate Governance. Under the charter, the Compensation Committee's primary responsibilities are to: (i) establish our company's overall management compensation philosophy and policy; (ii) make recommendations to our Board with respect to corporate goals and objectives with respect to compensation for our executive officers, including our Chief Executive Officer; (iii) make recommendations to our Board with respect to our executive officers' annual compensation including salary, bonus and incentive and equity compensation; and (iv) administer our incentive compensation programs and other equity-based compensation plans.

In 2007, the entire Board of Directors fulfilled the major responsibilities of the Compensation Committee and made all significant decisions pertaining to the base salary, variable compensation and stock option grants payable or awarded to the Company's named executive officers. The Compensation Committee met on five occasions during the year ended December 31, 2007. The Company has not in recent years engaged any compensation consultants in determining or recommending the amount or form of executive and director compensation.

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Policies, Procedures, and Practices

The Board's (Compensation Committee's) processes and procedures for the consideration and determination of executive compensation are as follows:

The Board or Committee requests recommendations from the CEO with respect to the elements of compensation to be determined by the Board or Committee;

The Board or Committee consults with and meets with the CEO as required to discuss the recommendations, meets in executive session, or discusses among themselves, as appropriate; and

The Board or Committee's decision is subsequently communicated to the CEO.

For the consideration and determination of director compensation, the Board may refer the matter to a standing Board committee or may appoint an ad-hoc committee to review the matter and make a recommendation to the entire Board.

Compensation Committee Interlocks and Insider Participation

During fiscal year 2007, the Compensation Committee was comprised of three independent directors: James S. Marston, Paul E. Schlosberg, and Antonio R. Sanchez III. None of Messrs. Marston, Schlosberg, or Sanchez is or was an officer or employee of our company or any of our subsidiaries during 2007 or had any relationship requiring disclosure under Item 404 of the SEC's regulations under Regulation S-K. Mr. Sanchez was an active employee from February 9, 1999, to September 28, 2001, during which time his title was National Account Executive. We have no executive officers who serve as a member of a board of directors or compensation committee of any other entity that has one or more executive officers serving as a member of our Board or Compensation Committee.

Shareholder Communication with our Board

Shareholders interested in communicating with our Board of Directors may do so by writing to our General Counsel, Ronald A. Woessner, at 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960. Our General Counsel will review all shareholder communications. Those that appear to contain subject matter reasonably related to matters within the purview of our Board of Directors will be forwarded to the entire Board or the individual Board member to whom the communication is addressed. Obscene, threatening, or harassing communications will not be forwarded.

Code of Ethics

We have a Code of Business Conduct, which applies to all of our employees, officers and directors, including a Code of Ethics, which applies to our Chief Executive Officer and senior financial officials. The Code of Business Conduct is available on our website at www.zixcorp.com under the heading Corporate Governance. The Code of Business Conduct is a reaffirmation that we expect all directors and employees to uphold our standards of ethical behavior and compliance with the law and to avoid actual or apparent conflicts of interest between their personal and professional affairs. The Code of Business Conduct establishes procedures for the confidential reporting, in good faith, of suspected violations of the Code of Business Conduct. The code also sets forth procedures to receive, retain, and treat complaints received regarding accounting, internal accounting controls, or auditing matters and to allow for

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the confidential and anonymous submission by employees of concerns regarding questionable accounting or auditing matters. Our Code of Business Conduct and our Code of Ethics also prohibits actual or apparent conflicts of interest between the interest of any of our directors or officers and the Company or its shareholders. Any waiver of our Code of Ethics is to be approved by the Company, the Board of Directors, or a committee of the Board of Directors, as applicable, and in compliance with applicable law. Any waiver of the Code of Ethics will be publicly disclosed as required by applicable law, rules, and regulations, including by posting the waiver on the Company's website.

INDEPENDENT REGISTERED PUBLIC ACCOUNTANTS

General

Whitley Penn LLP (Whitley Penn) has been selected by the Audit Committee as our independent registered public accounting firm for fiscal year 2008. Also, Whitley Penn was selected by the Audit Committee as our independent registered public accounting firm for 2006 and fiscal year 2007.

On September 6, 2006, our Audit Committee requested management to solicit proposals from several independent registered accounting firms for professional services relating to the audit of our financial statements. On September 26, 2006, we engaged Whitley Penn as our independent registered public accounting firm to audit our financial statements commencing with year 2006, subject to Whitley Penn's satisfactory completion of its client acceptance procedures. On September 26, 2006, we also notified Deloitte & Touche LLP (Deloitte), our independent auditors for the years ended December 31, 2004 and 2005, of our election to dismiss Deloitte as our independent auditors. The decision to change accounting firm was undertaken as a cost reduction measure and was approved by our Audit Committee.

Representatives of Whitley Penn are expected to be present at the 2008 Annual Meeting; they will have the opportunity to make a statement if they desire to do so, and they are expected to be available to respond to appropriate questions.

The reports of Deloitte on our financial statements for the years ended December 31, 2004 and 2005 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles. In connection with its audits of our financial statements for the years ended December 31, 2004 and 2005 and through September 26, 2006, (i) there were no disagreements with Deloitte on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to Deloitte's satisfaction, would have caused Deloitte to make reference to the subject matter of the disagreements in connection with its reports; and (ii) there were no reportable events as described in Item 304(a)(1)(v) of the SEC's Regulation S-K. Deloitte agreed with the foregoing disclosures as evidenced by their letter addressed to the SEC, which was filed with our Current Report on Form 8-K, filed September 29, 2006.

During the years ended December 31, 2004 and 2005, and through September 26, 2006, Whitley Penn was not engaged as an independent accountant to audit either our financial statements or those of any of our subsidiaries, nor have we or anyone acting on our behalf consulted with Whitley Penn regarding either: (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on our financial statements; or (ii) any matter that was the subject of a disagreement or reportable event as set forth in Item 304(a)(2)(ii) of Regulation S-K. Whitley Penn was, however, engaged to audit the Company's Corporate Retirement Plan (401k Plan) for the year ended

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December 31, 2005 in connection with the Company's annual reporting obligation under the Employment Retirement Income Security Act of 1974 (ERISA).

Fees Paid to Independent Public Accountants

Following is a summary of Whitley Penn's professional fees billed for the years ended December 31, 2006 and December 31, 2007, respectively: